

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____	)	
HOWDEN NORTH AMERICA, INC.	)	Civil Action No. _____
	)	
Plaintiff,	)	<b>Electronically Filed</b>
	)	<b>Jury Trial Demanded</b>
v.	)	
	)	
UTICA MUTUAL INSURANCE COMPANY	)	
AND NATIONAL INDEMNITY COMPANY,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

Howden North America Inc. (“HNA”) hereby files this Complaint for declaratory relief, a temporary restraining order and/or preliminary injunctive relief and monetary damages against Defendants Utica Mutual Insurance Company (“Utica”), and National Indemnity Company (“National Indemnity”), and in support thereof, avers as follows:

**NATURE OF THE CASE**

1. This is a civil action for declaratory, preliminary injunctive and monetary relief arising out of Utica’s wholesale repudiation of its contractual obligation under a coverage-in-place settlement agreement to defend, manage, and pay asbestos claims asserted against HNA. The settlement agreement (the “2005 Agreement”) was executed in September 2005 by HNA, Utica and four other insurers that had provided historical general liability coverage to HNA and its predecessors at various times from 1961 until 2002. The 2005 Agreement resolved protracted coverage litigation between HNA and its insurers in this Court concerning the insurers’ obligations to defend and indemnify HNA in hundreds of underlying tort suits seeking damages

based on alleged exposure to asbestos in products manufactured by HNA's predecessors.

*Howden Buffalo Inc. v. Ampco-Pittsburgh Corp., et al.*, Civil Action No. 03-1809 (W.D. Pa.).

2. Under the terms of the 2005 Agreement, a true and correct copy of which is attached hereto as Exhibit A, Utica and the other settling insurers agreed to pay specified percentages of HNA's defense costs and indemnity payments in the underlying asbestos tort actions, according to allocation methodologies set forth in the Agreement. As the primary carrier with the largest overall share of HNA's asbestos exposure, Utica insisted upon controlling the management of HNA's defense, and assumed the role of "Lead Carrier" responsible for administering and handling the defense and resolution of asbestos claims under the Agreement. In the seven years since the Agreement was executed, Utica's claims professionals have managed the defense and settlement of thousands of active asbestos tort cases, overseeing the activities of HNA's network of defense counsel, deciding which asbestos cases should be worked up for potential trial and which should be settled, and allocating defense and indemnity costs among Utica, the original settling insurers, and other insurers that have since joined the existing funding arrangement. Throughout this period, Utica has worked closely with HNA, as required by the 2005 Agreement, in assuring that the underlying asbestos cases are properly defended.

3. On or about September 28, 2012, without prior notice to HNA, Utica suddenly abdicated its rights and responsibilities as Lead Carrier, by purporting to transfer this important role to Defendant National Indemnity Company ("National Indemnity"), which, in turn has purported to assign the right to serve in the role of Lead Carrier to the New England division of one of its subsidiaries, Resolute Management Inc. ("Resolute"), a claims entity with a notorious reputation in the industry for slow-paying asbestos claims and contesting coverage for such claims. On information and belief, the purported assignment of claims handling responsibility to

National Indemnity and Resolute was accompanied by a reinsurance transaction in which (a) Utica transferred substantially all of its asbestos loss reserves to National Indemnity, (b) National Indemnity issued a reinsurance contract to Utica, which obligated National Indemnity to pay reinsurance for asbestos losses only if the principal and investment income it derives from Utica's loss reserves are insufficient to cover the asbestos losses under Utica policies, and (c) National Indemnity assumed complete financial responsibility for, and management control over, asbestos claims covered by Utica policies. National Indemnity and Resolute are not parties to the 2005 Agreement, are complete strangers to the Agreement, and are, in fact, directly adverse to HNA in related, insurance coverage litigation pending before the Court, where they have assumed identical financial control over asbestos claims covered under policies issued by some of HNA's excess insurers.

4. Utica's purported assignment of rights and obligations under the 2005 Agreement was made without any advance notice or warning to HNA, and without its oral or written consent, notwithstanding the inclusion of a clear and express "no assignment" provision in the Agreement between Utica and HNA.

5. HNA did not learn of the actions of Utica and National Indemnity until late afternoon on Friday, September 28, 2012. In even the short time since HNA became aware of Utica's abdication of its responsibilities under their Agreement, HNA has already suffered serious and irreparable injury. Specifically, Utica's attempt to walk away from its claims management responsibilities under the 2005 Agreement, and to cede its right and responsibility to control the defense of HNA asbestos claims to third- party strangers that are actively adverse to HNA in pending asbestos coverage litigation, have disrupted HNA's defense against hundreds of pending asbestos cases, sown confusion and disarray among local trial counsel who are

defending the ongoing asbestos cases against HNA, and infected the claims handling process under the 2005 Agreement with a serious conflict of interest. The actions of Utica and National Indemnity also have resulted in the transfer of privileged and highly confidential attorney-client and work-product information and documents to unrelated third parties who have an interest adverse to that of HNA with regard to the defense and coverage of asbestos claims. The conflict of interest created by the conduct of Utica and National Indemnity is of particular concern, as Resolute, the entity now purporting to act as Lead Carrier under the 2005 Agreement at the behest of National Indemnity, is actively controlling the defense of recalcitrant excess insurers in coverage litigation with HNA pending in this Court,<sup>1</sup> and in that capacity has asserted affirmative defenses challenging and attacking the validity of the allocation methodology, payment criteria, and criteria for establishing exhaustion of the policies issued by Utica and other insurers that are subject to the 2005 Agreement.

6. In light of the irreparable harm that HNA has suffered and will continue to suffer absent judicial relief, HNA seeks in this lawsuit: (a) a declaration of the rights and the obligations of HNA and Utica under their 2005 Agreement; (b) a determination that Utica is in breach of its contractual obligations under the Agreement and that its purported assignment of its rights and obligations as Lead Carrier under the Agreement is in violation of the terms of the Agreement and null and void; (c) monetary damages for Utica's bad faith conduct in abandoning its obligations under the Agreement to the detriment of HNA; and (d) damages against National Indemnity for tortiously interfering with HNA's rights under its Agreement with Utica. HNA also seeks a temporary restraining order and/or preliminary injunctive relief against Utica (a) to

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<sup>1</sup> *Howden North America Inc. v. ACE Property & Cas. Ins. Co., et al.*, Civil Action No. 09-1014 (W.D. Pa.) (the "2009 Coverage Action") and *Air & Liquid Systems Corp. et al. v. Allianz Underwriters Ins. Co., et al.*, Civil Action No. 11-246 (W.D. Pa.) (the "2011 Coverage Action").

obligate Utica either to continue to serve as Lead Carrier under the Agreement, or to withdraw as Lead Carrier, in accordance with the terms of the Agreement, thereby triggering the selection process for a new Lead Carrier as set forth in Section IV.C. of the Agreement; (b) to prevent any assignment of Utica's obligations under the Agreement, in violation of the terms of the Agreement and without the consent of HNA, from taking effect, and (c) to stop any further transfer of confidential or privileged asbestos claim information and documents from Utica to National Indemnity or Resolute, and to require Utica to retrieve such information and documents from National Indemnity and Resolute to the extent it has wrongfully been provided to them by Utica without the knowledge or consent of HNA.

#### **THE PARTIES**

7. Plaintiff Howden North America Inc. is a Delaware corporation with its principal place of business in Columbia, South Carolina.

8. Defendant Utica Mutual Insurance Company is a New York corporation with its principal place of business in New Hartford, New York.

9. Defendant National Indemnity Company is a Nebraska corporation with its principal place of business in Omaha, Nebraska.

#### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1332, as the parties are of diverse citizenship and the amount in controversy exceeds \$75,000, exclusive of costs and interest.

11. Venue for this matter is proper in this District under 28 U.S.C. § 1391(b)(2) and (c).

## FACTUAL BACKGROUND

### A. The Coverage-In-Place Agreement Between HNA and Utica

12. Between June 1961 and June 1981, Utica issued 36 primary and umbrella insurance policies, with products hazard limits in excess of \$50 million, to The Buffalo Forge Company, a corporate predecessor of HNA. These policies require Utica to defend and indemnify HNA in connection with underlying asbestos litigation arising out of the products and operations of its corporate predecessor, Buffalo Forge.

13. From 2003 until 2005, HNA was involved in litigation in this Court with Utica and other insurers concerning the insurers' obligations to provide coverage for underlying asbestos claims and lawsuits against HNA. *Howden Buffalo, Inc. v. Ampco-Pittsburgh Corp., et al.*, Civil Action No. 03-1809 (W.D. Pa.) (the "2003 Coverage Action"). After extensive litigation and complex settlement negotiations that occurred under the auspices of this Court, the parties eventually reached a compromise, and entered into a Defense and Indemnity Agreement With Respect to Asbestos-Related Bodily Injury Claims, referred to herein as the 2005 Agreement.

14. Under Section IV.A. of the 2005 Agreement, Utica obtained the right to serve as Lead Carrier, which included the right and duty to "control the defense," "make all final decisions concerning settlement or trial," and "in good faith defend and reasonably settle any Asbestos-Related Bodily Injury Claims, even over the objection of [HNA] or any other affected Party Insurer." Pursuant to this provision, Utica has controlled every aspect of HNA's asbestos defense strategy, including the selection, retention and rates charged by defense counsel, the guidelines to be followed by defense counsel in performing their duties, and all decisions concerning settlement or trial of asbestos cases. In its role as Lead Carrier, Utica also has allocated defense and indemnity payments for underlying asbestos claims among the participating insurers and HNA, according to allocation

methodologies set forth in Sections II and V of the Agreement. Since the Agreement was executed, Utica has secured the dismissal of nearly 6,500 asbestos suits and settled 370 suits.

15. Under Section IV.C. of the 2005 Agreement, Utica, as the Lead Carrier, was entitled to withdraw as Lead Carrier under specified circumstances, and if that happened, HNA and the other participating insurers would work together to designate a new Lead Carrier.

16. While the 2005 Agreement gave Utica the right to cease serving as Lead Carrier, no provision in the Agreement gave Utica the right to delegate or otherwise assign its rights and duties as Lead Carrier to a third-party stranger to the Agreement.

17. To the contrary, Section XVI of the Agreement, entitled “NO ASSIGNMENT,” specifically prohibits any party to the Agreement from assigning its rights and obligations under the Agreement without the advance, written consent of the other parties, except in cases of mergers, consolidations or other corporate reorganizations. Section XVI provides:

None of the Parties shall assign this Agreement without first obtaining the written consent of the other Parties; provided, however, that this provision shall not prohibit any assignment by a Party made by merger, consolidation or operation of law or to a person or entity who succeeds to all or substantially all of such Party’s rights.

**B. Utica’s Abdication of Its Asbestos Claims Management Obligations**

18. On the afternoon of Friday, September 28, 2012, HNA’s asbestos claims consultant, Richard O’Connell, who has coordinated with Utica in the management, defense and resolution of asbestos suits against HNA since the Agreement was executed in 2005, received a telephone call from Daniel Hammond, an in-house lawyer for Utica who supervised the Utica claims personnel responsible for handling HNA asbestos claims. Mr. Hammond informed Mr. O’Connell that effective immediately, Utica was transferring responsibility for managing and defending HNA asbestos claims to Resolute, pursuant to agreements that had been executed

between Utica, Resolute, and National Indemnity, a Berkshire Hathaway-owned reinsurer and parent company of Resolute.

19. Shortly after that call, Mr. Hammond forwarded to Mr. O'Connell a letter dated September 28, 2012 from Richard P. Creedon, Utica's General Counsel and Senior Claims Officer. The letter stated that Utica had entered into an "Administrative Services Agreement" with National Indemnity, and that Resolute (which was described as an "affiliate" of National Indemnity) had assumed responsibility for the day-to-day handling and administration of all asbestos claims against Utica policyholders, including HNA. The letter also stated that Resolute had already "begun the handling of asbestos-related claims" against Utica's policyholders. A true and correct copy of the September 28 letter is attached hereto as Exhibit B hereto.

20. The September 28 letter did not inform HNA that : (a) the "Administrative Services Agreement" was but one part of a reinsurance transaction in which Utica had transferred the bulk of its asbestos loss reserves to National Indemnity as a "premium" for reinsurance protection from National Indemnity; (b) the reinsurance would not be available unless and until Utica's asbestos losses exceeded the principal and investment income derived from the loss reserves it had transferred to National Indemnity; (c) in the meantime, National Indemnity was free to invest and profit off the "float" from Utica's asbestos loss reserves, which were supposed to be used solely to pay asbestos claims against Utica's policyholders, including HNA; (d) National Indemnity had assumed complete financial responsibility for all asbestos claims potentially covered under Utica policies; and (e) in exchange for that broad assumption of financial responsibility, National Indemnity and its Resolute subsidiary had received an assignment of all of Utica's rights and obligations under hundreds of policies and coverage-in-place agreements, including the 2005 Agreement with HNA.



21. Utica provided no advance notice to HNA of the transaction with National Indemnity, and never sought HNA's consent to the assignment of its claims handling responsibilities as Lead Carrier under the 2005 Agreement to National Indemnity and its claims subsidiary Resolute.

22. Unbeknownst to HNA, Utica in fact had been secretly transferring to Resolute confidential claims handling data, including privileged communications from HNA's underlying asbestos defense counsel, about pending asbestos cases even before Utica had disclosed the arrangement with National Indemnity to HNA.

23. Also unbeknownst to HNA, and without any attempt to secure its consent, Utica informed HNA's asbestos defense counsel in a September 28 email that National Indemnity was taking over the handling and administration of asbestos claims against HNA, and that defense counsel would be reporting directly to Resolute effective October 1, 2012. A true and correct copy of one such email is attached as Exhibit C hereto. HNA did not learn of these unilateral emails until October 1, 2012, when one of HNA's defense counsel forwarded the email to Mr. O'Connell.

24. HNA responded to Utica's email to asbestos defense counsel on October 2, 2012. HNA advised its defense counsel that it had not consented to Utica's purported assignment of its role as Lead Carrier to Resolute, that Utica's action was in breach of its claims handling obligations under the 2005 Agreement, that defense counsel should continue to communicate with Utica as Lead Carrier, and that any transfer of information to Resolute risked waiver of the attorney-client and joint defense privileges. A true and correct copy of HNA's October 2 email is attached as Exhibit D hereto. However, some confidential defense information had already been sent to Resolute, and the conflicting instructions from Utica and HNA have left defense

counsel, who engaged in active litigation of underlying asbestos cases, uncertain of their reporting responsibilities and lines of authority.

25. Utica informed HNA in its September 28 correspondence that Leslie Kilnapp of Resolute would henceforth be responsible for managing HNA's defense of underlying asbestos suits. Ms. Kilnapp currently functions as the principal client representative for a number of excess insurers that are managed by Resolute, and that are engaged in active coverage litigation with HNA in two actions pending in this Court: *Howden North America Inc. v. ACE Property & Casualty Ins. Co., et al.*, No. 09-1014 (W.D. Pa.) (the "2009 Coverage Action") and *Air & Liquid Systems Corp. et al. v. Allianz Underwriters Ins. Co., et al.*, No. 11-246 (W.D. Pa.) (the "2011 Coverage Action"). Attached as Exhibit E hereto is a true and correct copy of a recent filing in this Court identifying Ms. Kilnapp as a principal claims representative of defendants New Hampshire Insurance Company, Underwriters at Lloyd's, Tenecom, Equitas Insurance Limited, and Lexington Insurance Company.

26. Defendant New Hampshire is a Pennsylvania company that has filed a reactive lawsuit against HNA in England and that unsuccessfully attempted to escape this Court's jurisdiction through a belated *forum non conveniens* motion filed over two years after the 2009 Coverage Action was initiated by HNA. New Hampshire and the other Resolute-managed and controlled insurers in the 2009 and 2011 Coverage Actions also have asserted dozens of affirmative defenses to coverage, including multiple defenses attacking the allocation methodology, policy exhaustion criteria, and other features of the 2005 Agreement. Utica and National Indemnity have now determined that the same claims person responsible for coordinating these attacks on the 2005 Agreement by Resolute-controlled excess insurers should assume management responsibility for administering the 2005 Agreement as Lead Carrier. A

more glaring example of a conflict of interest, and of self-dealing by the defendants herein at the expense of HNA, would be difficult to posit.

27. On the same day Utica summarily told HNA that it was transferring its contractual responsibilities as Lead Carrier to National Indemnity and Resolute, Utica's CEO, J. Douglas Robinson, issued a press release touting the positive impact that Utica's unloading of its historical asbestos liabilities would have on its financial performance:

Over the five-year period from 2006 to 2010, Utica National has carried the third-largest drag on earnings, due to asbestos and environmental losses, in the property/casualty market, as measured by the impact on our combined ratio. Ceding these legacy asbestos exposures gives us more control over our own destiny, restores a large measure of predictability to our results, and greatly mitigates the uncertainty that these claims and their development present to our company.

A true and correct copy of excerpts from the Utica press release, as published in Business Insurance, is attached as Exhibit F hereto.

**C. HNA Objects to Utica's Unilateral Conduct**

28. On the following Monday, October 1, 2012, HNA responded to Utica's September 28 letter by formally objecting to Utica's purported assignment of its asbestos claims management responsibilities, and stated that HNA considered such unilateral action to be a violation of Utica's obligations under the 2005 Agreement. A copy of the October 1 letter is attached as Exhibit G hereto.

29. In the same letter, HNA asked Utica to provide HNA with additional information, and answer the following questions, about the reinsurance and claims administration transaction that had been disclosed to it the previous Friday:

1. What information, if any, concerning the defense of active Asbestos-Related Bodily Injury Claims has Utica transferred to Resolute without the knowledge or consent of HNA and the other parties to the 2005 Agreement?

2. If confidential defense information has been transferred to Resolute, please describe the steps that Utica will take to promptly retrieve any such information from Resolute and avoid a potential waiver of privilege.

3. Please provide copies of any and all documents describing or summarizing how Utica's claims management responsibilities as Lead Carrier would be handled under the proposed transactions with NICO and Resolute, including copies of the Administrative Services Agreement referenced in your September 28 letter, any reinsurance agreement between Utica and NICO, and any other agreements or understandings between Utica, NICO and/or Resolute bearing upon Utica's obligations for managing and defending Asbestos-Related Bodily Injury Claims against HNA.

4. What steps has Utica taken to address the obvious conflict-of-interest that would exist in the event Resolute assumed Utica's responsibilities for administering an Agreement whose allocation methodologies, provisions for establishing policy exhaustion, and legal effect have been repeatedly challenged by Resolute, acting on behalf of other recalcitrant insurers, in coverage litigation pending between HNA, Ampco-Pittsburgh and Resolute-controlled insurers in the U.S. District Court for the Western District of Pennsylvania?

30. Utica has not provided any of the information and documents requested by HNA, and appears to have taken no action to retrieve confidential attorney-client communications and other information concerning HNA's defense strategy that Utica improperly and without authorization transferred to Resolute. In a recent telephone call, Utica informed HNA that the questions raised in its October 1 letter were "under consideration." Meanwhile, Utica has asserted to HNA that its abdication as Lead Carrier and purported transfer of those responsibilities to National Indemnity do not constitute an "assignment" but instead are a "delegation." This semantical position lacks any legal or factual foundation.

**D. HNA Has Suffered and Continues to Suffer Irreparable Harm**

31. As a result of Utica's purported assignment of its claims management responsibilities as Lead Carrier to National Indemnity and Resolute, HNA has already suffered irreparable harm, in the following particulars:

a. Over HNA's repeated objections, Utica has transferred, and continues to transfer, underlying asbestos claims data to National Indemnity and Resolute, including privileged attorney-client communications from underlying defense counsel and other confidential information about HNA's defense strategy, exposing HNA to potential waiver arguments from third parties;

b. The conduct of HNA's defense against hundreds of pending asbestos cases has been severely disrupted, as underlying asbestos defense counsel have received no direction from Utica and litigation deadlines have either been deferred or have passed with no action;

c. Underlying defense counsel have been distracted by the inconsistent communications they have received from HNA, Utica and Resolute, and some have expressed fears that they will be fired by Resolute, which has an established track record of replacing competent trial counsel with cut-rate defense firms when it has assumed claims handling responsibility for other insurers that have sold off their legacy asbestos liabilities to National Indemnity; and

d. HNA's entire defense effort is now infected with a significant conflict of interest, as the same claims entity (Resolute), and the same Resolute claims personnel, who are responsible for challenging and attacking various features of the 2005 Agreement on behalf of recalcitrant excess insurer defendants in the pending 2009 and 2011 Coverage Actions, have sought to hijack HNA's asbestos defense effort by assuming the role of Lead Carrier under the same 2005 Agreement and attempting to control of the management of HNA's asbestos claims.

32. In these and other respects, HNA has been and will continue to be irreparably harmed by the joint actions of Utica and National Indemnity. Absent a temporary restraining

order and/or an injunction, HNA's ongoing defense against hundreds of pending asbestos claims will be irreversibly jeopardized.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment for Breach of Contract and Preliminary Injunctive Relief Against Utica)**

33. HNA realleges paragraphs 1 through 32 of its Complaint as if set forth fully herein.

34. HNA and Utica are parties to the 2005 Agreement, pursuant to which Utica has the right and obligation to handle, administer, manage, defend and settle asbestos claims against HNA under the terms described above. HNA's rights under the Agreement to rely upon Utica's superior claims management expertise, network of defense counsel, and litigation resources are of critical importance to HNA as it struggles with the burdens of asbestos mass tort litigation, which has already sent 100 or more other asbestos defendants into bankruptcy.

35. Utica has breached its obligations under the 2005 Agreement by purporting to assign and transfer, without HNA's advance consent, its role and responsibilities as Lead Carrier under the Agreement to National Indemnity and Resolute, which are managing and controlling the defense of multiple other insurers that are actively adverse to HNA's interests in the 2009 and 2011 Coverage Actions; by providing privileged attorney-client, work product and other confidential defense materials to National Indemnity and Resolute, which are strangers to the 2005 Agreement and are not authorized to have such information; and by failing to assign defense counsel to, and manage the defense of, new asbestos cases that continue to be filed against HNA.

36. As a result of Utica's conduct, HNA has suffered and will continue to suffer damage and irreparable injury, as outlined above.

37. In light of Utica's conduct, the parties are engaged in a sufficiently adverse, actual and justiciable controversy at this time, and this Court is capable of adjudicating legal questions and declaring the rights of the parties under the 2005 Agreement. The dispute between HNA and Utica is of sufficient immediacy to warrant the issuance of declaratory and injunctive relief.

**SECOND CLAIM FOR RELIEF**  
**(Monetary Damages for Breach of Contract Against Utica)**

38. HNA realleges paragraphs 1 through 37 of its Complaint above as if fully set forth herein.

39. As a direct and proximate result of Utica's ongoing breaches of its claims management obligations to HNA under the 2005 Agreement, as summarized above, HNA has suffered and will continue to suffer monetary damages, in amounts to be proven at trial, which damages are not subject to the Utica policies' limits of liability.

**THIRD CLAIM FOR RELIEF**  
**(Tortious Interference with Contract Against National Indemnity)**

40. HNA realleges paragraphs 1 through 39 of its complaint as if set forth fully herein.

41. On information and belief, National Indemnity Company, on behalf of itself and/or one or more of its subsidiaries or affiliates, intentionally and improperly and without justification, interfered with the performance of Utica's claims management obligations to HNA under the 2005 Agreement by inducing or otherwise causing Utica to repudiate its ongoing obligations under the Agreement, and/or otherwise causing Utica to cede or assign its role as Lead Carrier under the Agreement, and the control of HNA's defense, to National Indemnity. National Indemnity also induced Utica to transfer to National Indemnity's claims subsidiary, Resolute, confidential attorney-client communications and work product relating to the defense

of the underlying asbestos cases against HNA. These actions were undertaken surreptitiously, deceptively, deliberately, and with knowledge by National Indemnity that they were not authorized by HNA, directly contrary to HNA's interests, and in clear violation of Utica's obligations under the terms of the 2005 Agreement, to the manifest detriment of HNA.

42. On information and belief, the actions of National Indemnity Company in inducing Utica to repudiate its obligations under the Agreement were taken to promote National Indemnity's own financial self-interest, and the financial interests of one or more of its affiliates, without regard to the contractual or legal obligations of Utica to HNA.

43. As a result of National Indemnity Company's tortious misconduct, HNA has suffered and will continue to suffer damage, including pecuniary damages, and irreparable injury as outlined above, and its ongoing defense against pending asbestos cases has been and continues to be severely jeopardized.

44. As a result of National Indemnity Company's actions, the parties are engaged in a sufficiently adverse, actual and justiciable controversy at this time, and this Court is capable of adjudicating legal questions and declaring the rights of the parties under the Agreement of May 20, 2005, negotiated to resolve prior litigation in this Court. The controversy between the parties is of sufficient immediacy to warrant the issuance of declaratory relief and the award of damages, in an amount to be proven at trial.

**FOURTH CLAIM FOR RELIEF**  
**(Bad Faith and Violations of 42 Pa. C.S. § 8371 Against Utica)**

45. HNA realleges paragraphs 1 through 44 of its complaint as if set forth fully herein.

46. Utica has critically important claims handling obligations to HNA in its role as Lead Carrier under the 2005 Agreement, a role it affirmatively requested and voluntarily



undertook, with full knowledge of what its responsibilities as Lead Carrier would entail in protecting HNA's interests. By deliberately abdicating those responsibilities without prior notice to or consent of HNA, and by unilaterally purporting to assign its asbestos claims handling obligations -- in violation of the express terms of the Agreement -- to entities that are not even parties to the Agreement, have interests that seriously conflict with those of HNA, and have an established practice of resisting coverage of asbestos claims and withholding legitimate claims payments for their own financial benefit -- Utica has acted in bad faith and in conscious disregard of its obligations to HNA, in violation of 42 Pa.C.S. § 8371.

47. As further evidence of Utica's bad faith, Utica's conduct, as described above, violates Pennsylvania's Unfair Insurance Practices Act, 40 PA. STAT. §§ 1171.1–1171.15 (West 2012), including but not limited to section 1171.5(a)(10)(i), (ii), (iii) and (vi); the and Unfair Claims Settlement Practices Regulations, 31 PA. CODE §§ 146.1–146.8 (2012), including but not limited to section 146.5(a) and 146.7(d).

48. Utica's actions in abandoning, without any legal basis and for its own financial gain, its ongoing responsibilities and obligations in managing HNA's defense against asbestos claims, and in purportedly transferring those responsibilities to entities that are directly adverse to HNA in pending coverage litigation, that have attacked and challenged the very Agreement that they now seek to control and administer as Lead Carrier, and that have a strong financial incentive not to handle, process and promptly pay claims in good faith, has prevented HNA from obtaining a timely and proper defense of claims against it in the Asbestos Suits, to which it is entitled under the Agreement. For example, although HNA only learned of Utica's abdication of its claims handling responsibilities a few days ago, HNA has learned that defense counsel are no

longer even being assigned to protect HNA's rights in underlying asbestos suits being filed against it.

49. Utica's actions demonstrate and constitute bad faith in violation of 42 Pa. C.S.A. § 8371, for which HNA is entitled to prejudgment interest, punitive damages, and costs and fees.

### **PRAYER FOR RELIEF**

**WHEREFORE**, on its First Claim for Relief, HNA requests that the Court provide the following relief:

(a) A declaration that defendant Utica has breached its obligations under the 2005 Agreement by abdicating its role as Lead Carrier and attempting to transfer that role, and the claims management responsibilities that it entails, to National Indemnity without HNA's prior written consent;

(b) a declaration that Utica must remain as Lead Carrier, must immediately resume its claims management responsibilities as Lead Carrier, and must continue without interruption to carry out its responsibilities and duties as Lead Carrier under Section IV.A. of the 2005 Agreement unless and until it complies with the conditions for withdrawal set forth in Section IV.B. of the 2005 Agreement;

(c) a declaration that Utica's purported assignment or transfer of its responsibilities as Lead Carrier under the Agreement to National Indemnity and any of its affiliates is null and void *ab initio*;

(d) a temporary restraining order and/or preliminary injunction that:

(i) enjoins Utica and National Indemnity from taking any action to transfer or assign any of Utica's rights and claims management obligations as Lead Carrier under the 2005 Agreement to National Union or its affiliates;

(ii) requires Utica to continue to serve as Lead Carrier unless and until it complies with the criteria for withdrawal set forth in Section IV.C. of the 2005 Agreement;

and

(iii) prohibits Utica from transferring any asbestos claims data and confidential asbestos defense information to National Indemnity and its affiliates.

(e) award of HNA such other and further relief as the Court may deem just and proper.

**WHEREFORE**, on its Second Claim for Relief, HNA requests that the Court:

(a) enter a judgment awarding HNA:

(i) actual compensatory and consequential damages sustained by HNA as a result of Utica's breach of the 2005 Agreement, plus interest according to law, in an amount to be established through proof at trial; and

(ii) such other and further relief as the Court may deem just and proper.

**WHEREFORE**, on its Third Claim for Relief, HNA requests that the Court:

(a) enter a judgment declaring that Defendant National Indemnity Company has intentionally and tortiously interfered with rights of HNA under the 2005 Agreement and has induced Utica to breach its claims management obligations to HNA under that Agreement; and

(b) enter a judgment awarding HNA actual compensatory and consequential damages sustained by HNA as a result of National Indemnity Company's tortious interference with contractual relations, plus interest according to law, in amounts to be established through proof at trial; and

(c) award such other and further relief as the Court may deem just and proper.

**WHEREFORE**, on its Fourth Claim, HNA requests that the Court:

(a) Enter judgment awarding HNA punitive damages, costs and attorneys' fees, together with prejudgment interest, for Utica's flagrant and deliberate violations of its obligations of good faith and fair dealing owed to HNA in accordance with 42 Pa. C.S.A. § 8371.

**JURY DEMAND**

HNA hereby demands a trial by jury on all counts as to which a jury trial is available.

Respectfully submitted,

/s/ William D. Geiger

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October 4, 2012

## **MAIN AGREEMENT**

SCRIPPS

**CONFIDENTIAL SETTLEMENT COMMUNICATION – WITHOUT PREJUDICE**

**DEFENSE AND INDEMNITY AGREEMENT WITH RESPECT TO  
ASBESTOS-RELATED BODILY INJURY CLAIMS  
AGAINST HOWDEN BUFFALO OR BUFFALO FORGE**

This agreement is entered among HOWDEN BUFFALO INC., formerly known as Buffalo Forge Company; UTICA MUTUAL INSURANCE COMPANY; XL INSURANCE COMPANY, LTD., formerly known as Winterthur International Insurance Co. Ltd. or XL Winterthur International Insurance Co. Ltd.; ARGONAUT INSURANCE COMPANY, ARGONAUT MIDWEST INSURANCE COMPANY, and ARGONAUT SOUTHWEST INSURANCE COMPANY; HARTFORD ACCIDENT AND INDEMNITY COMPANY; LIBERTY MUTUAL INSURANCE COMPANY; and PACIFIC EMPLOYERS INSURANCE COMPANY.

**I. DEFINITIONS**

For the purpose of this Agreement only, the following terms shall have the meanings set forth in this Section I. Each defined term stated in a singular form shall include the plural form, each defined term stated in plural form shall include the singular form, and each reference to the masculine or the feminine gender shall include the other.

A. “Agreement” shall mean this Defense and Indemnity Agreement with Respect to Asbestos-Related Bodily Injury Claims against Howden Buffalo or Buffalo Forge.

B. “Aggregate Limits” shall mean the aggregate limits of liability for bodily injury coverage applicable to products/completed operations claims under the terms and conditions of any of the Policies.

C. “Ampco Cross-Acknowledgements Agreement” shall mean the Cross-Acknowledgements and Consents with Respect to Defense and Indemnity Agreements with Respect to Asbestos-Related Bodily Injury Claims appended as Exhibit D.

D. “Ampco-Pittsburgh Companies” shall mean Ampco-Pittsburgh Corporation and its present or former subsidiaries and/or divisions, including Buffalo Pumps, Inc. and Aerofin Corporation; *provided, however*, that “Ampco-Pittsburgh Companies” shall not include Buffalo Forge.

E. “Argonaut” shall mean Argonaut Insurance Company, Argonaut-Midwest Insurance Company and Argonaut-Southwest Insurance Company, or their successors or assigns.

F. “Asbestos-Related Bodily Injury Claim” shall mean a past, pending or future claim or lawsuit, or any portion thereof, that seeks damages from Buffalo Forge or Howden Buffalo for bodily injury, sickness, or disease of any kind or death resulting therefrom, or for pain and suffering, mental anguish, loss of services or loss of consortium, which are alleged to have been caused, in whole or in part, by exposure to a Buffalo Forge Asbestos-Containing Product. “Asbestos-Related Bodily Injury Claim”

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includes all such claims or lawsuits naming Howden Buffalo or Buffalo Forge that actually or potentially involve a Buffalo Forge Asbestos-Containing Product, unless and until it is determined otherwise pursuant to Section IV.K.3.; but it does not include 1) claims by employees or former employees of Howden Buffalo against Howden Buffalo that constitute workers' compensation claims under the terms and conditions of the Policies, nor 2) any claim naming Howden Buffalo solely as successor to an entity other than Buffalo Forge, unless and until it is determined that such claim actually involves a Buffalo Forge Asbestos-Containing Product pursuant to Section IV.K.3.

G. "Buffalo Forge" shall mean Buffalo Forge Company, the Delaware corporation, on or after July 23, 1982 and Buffalo Forge Company, the New York corporation, before July 23, 1982.

H. "Buffalo Forge Asbestos-Containing Product" shall mean a product that was allegedly manufactured, distributed, handled, installed, repaired, maintained or sold by Buffalo Forge, and that allegedly contained asbestos or included features allegedly designed to permit the incorporation of asbestos-containing materials. "Buffalo Forge Asbestos-Containing Product" shall not include any product allegedly manufactured, distributed, handled, installed, repaired, maintained or sold solely by an entity or entities other than Buffalo Forge. *Provided, however*, that the Parties shall resolve in accordance with Section VIII.C. what products in addition to fans or blowers should be deemed to be "Buffalo Forge Asbestos-Containing Products."

I. "Contribution Percentage" shall mean the respective percentage contribution to the total Defense Costs or Indemnity Costs, as the case may be, allocable to a Party Insurer or to the UK Insurance Program under this Agreement, as calculated under the terms of Sections II.E. and F. and Section V; *provided, however*, that the UK Insurance Program's Contribution Percentage shall be subject always to the terms of Section II.K.

J. "Defense Costs" shall include all reasonable and necessary fees, expenses and costs incurred in the defense of the Asbestos-Related Bodily Injury Claims potentially covered by the Policies, including, without limitation, investigative expenses, attorneys' fees and expenses (including those for National Coordinating Counsel), court costs, expert and other witness fees, medical reports, jury consultant fees, and mock trial expenses. Defense Costs shall not include any Party's expenses for general overhead, administrative, or internal expense, including but not limited to costs and expenses incurred for "in house" counsel; nor shall it include legal fees or costs associated with coverage issues.

K. "Effective Date" is the date specified in Section II.A.

L. "Exhaustion" shall mean the payment of, and "Exhaust" shall mean to pay, (a) Indemnity Costs in a total amount equal to the applicable limit set forth in a Non-Wasting Policy, and (b) Indemnity Costs and/or Defense Costs in a total amount equal to the applicable limit set forth in a Wasting Policy. *Provided, however*, that for Policies whose Limits of Liability in Exhibit A are stated as a percentage of a dollar amount,

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Exhaustion of a Party Insurer's applicable limit shall mean payment on a quota-share basis of a total amount equal to the stated percentage times the stated dollar amount; but if a Policy has quota-share participants in addition to that Party Insurer, such Exhaustion of the Party Insurer's applicable limit shall not be deemed by itself to Exhaust the Policy unless the remaining percentage of that Policy's applicable limit is paid, whether by the other quota-share participants or by some other entity on their behalf. *Provided further*, that with respect to an Aggregate Limit or to an Occurrence Limit applicable to an Other Insured, "Exhaustion" shall have the meaning provided in the Ampco Cross-Acknowledgement Agreement.

M. "First Exposure Date" is the date of the asbestos claimant's first alleged date of contact with a Buffalo Forge Asbestos-Containing Product, as determined from the evidence in the order of priority set forth in Section II.G.

N. "Governmental Claim" shall mean an Asbestos-Related Bodily Injury Claim arising out of a claimant's alleged exposure to Buffalo Forge Asbestos-Containing Products that were sold by Buffalo Forge or any other entity to any agency or entity of the United States Government, including, but not limited to, the United States Navy or Coast Guard.

O. "Hartford" shall mean Hartford Accident and Indemnity Company, or its successors or assigns.

P. "Howden Buffalo" shall mean Howden Buffalo Inc., formerly known as Buffalo Forge Company and as The Howden Fan Company, Inc., whether identified by its present name or by a former name, or its successors or assigns. "Howden Buffalo" shall not mean Sirocco Puerto Rico, Inc. or Novenco Fans, Inc., or any predecessor thereof.

Q. "Howden Entities" shall mean Howden Buffalo and any of its employees, officers, directors, principals, parents, subsidiaries, affiliates, associated corporations, agents, representatives, or predecessors, and any of their respective successors or assigns.

R. "Incurred," with respect to Defense Costs, shall mean that a Party has become liable for or subject to payment of such costs because the services have been rendered.

S. "Indemnity Costs" shall mean those payments made in satisfaction of judgments for compensatory damages in relation to Asbestos-Related Bodily Injury Claims for which Howden Buffalo is legally liable, and reasonable settlements of claims that present reliable evidence of exposure to a Buffalo Forge Asbestos-Containing Product.

T. "Injury Allocation Period" shall mean the period between: (a) the later of (i) an asbestos claimant's First Exposure Date and (ii) June 1, 1961, and (b) the earliest of (i) the date the Asbestos-Related Bodily Injury Claim is made, (ii) the date of death of the individual claimant, and (iii) July 1, 2002; *provided, however*, that the Injury Allocation Period shall exclude the period September 1, 1986 to May 1, 1995 (except to the extent



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that general liability insurance policies covering all or part of that period are added to the Agreement in accordance with Section XI.C.); and *provided further*, that upon the Exhaustion of either Hartford Policy #40 JPRP 30712 E or Liberty Mutual Policy #RG1-681-004076-076, the periods of such policies shall not be included in a claimant's Injury Allocation Period; and *provided further*, that for Governmental Claims, the Injury Allocation Period shall be governed by Section V.

U. "Lead Carrier" shall mean Utica, or, if Utica ceases to serve pursuant to Section IV.C., any other entity selected to fulfill that role.

V. "Liberty Mutual" shall mean Liberty Mutual Insurance Company, or its successors or assigns.

W. "National Coordinating Counsel" shall mean a firm selected jointly by the Lead Carrier and Howden Buffalo, after consultation with the other Party Insurers, that has significant experience in multi-jurisdictional asbestos cases prior to its involvement in the Asbestos-Related Bodily Injury Claims, with the duties set forth in Section IV.E. of this Agreement. As of the Effective Date of the Agreement, National Coordinating Counsel shall be the firm of Riley, Hewitt & Sweitzer.

X. "Non-Wasting Policy" shall mean any Primary Policy, any Umbrella Policy designated as such on Exhibit A, Table II, and any other Policy that is not a Wasting Policy.

Y. "Occurrence Limits" shall mean each Policy's per occurrence limits of liability for bodily injury coverage.

Z. "Other Carriers" shall mean Argonaut, Hartford, Liberty Mutual, PEIC, Winterthur, and any other umbrella or excess carrier that issued a policy to Ampco-Pittsburgh Corporation or a subsidiary thereof and that agrees to contribute to Defense Costs and Indemnity Costs in accordance with Sections II.E. and F. and Section V of this Agreement, or their respective successors or assigns.

AA. "Other Insured" shall mean any entity other than Buffalo Forge that claims to be an insured under the Policies issued before September 1, 1986, including one or more of the Ampco-Pittsburgh Companies.

BB. "Party" shall mean a signatory to this Agreement.

CC. "Party Insurer" shall mean a Party that issued a Policy.

DD. "PEIC" shall mean Pacific Employers Insurance Company, or its successors or assigns.

EE. "Policy" shall mean an actual or alleged liability insurance policy identified on Exhibit A.

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FF. "Primary Policy" shall mean an actual or alleged primary liability insurance policy identified on Exhibit A, Table I.

GG. "UK Insurance Program" shall mean the liability insurance program in effect during the period May 1, 1995 through June 30, 2002, under which Howden Buffalo is an insured and for which Winterthur is a quota-share insurer under the Policies identified in Exhibit A, Table II, along with other insurers that underwrote quota shares of the same layers of risk (whether by subscribing to the same Policies or by issuing separate policies).

HH. "Umbrella Policy" shall mean an actual or alleged umbrella or excess liability insurance policy identified on Exhibit A, Table II.

II. "Utica" shall mean Utica Mutual Insurance Co., or its successors or assigns.

JJ. "Wasting Policy" shall mean any Umbrella Policy designated as such on Exhibit A, Table II, and any other umbrella or excess policy that expressly and unambiguously provides that Defense Costs erode or reduce the applicable limits available for payment of Indemnity Costs.

KK. "Winterthur" shall mean Winterthur International Insurance Co. Ltd. or XL Winterthur International Insurance Co. Ltd., both now known as XL Insurance Company, Ltd., or its successors or assigns.

**II. DEFENSE AND INDEMNITY COST FUNDING**

A. This Agreement shall become effective as of August 1, 2005.

B. 1. By no later than forty-five (45) days after receipt of invoices for any Defense Costs and Indemnity Costs that were Incurred but unpaid as of May 20, 2005, Winterthur shall pay all such costs subject to its right to the reimbursements set forth in Section B.2. hereof, and subject to Section II.K.

2. By no later than sixty (60) days after the Effective Date, the following Party Insurers shall pay to Winterthur the following sums in partial reimbursement for the Defense Costs and Indemnity Costs, respectively, paid by Winterthur pursuant to Section II.B.1.:

		<u>Defense Costs</u>	<u>Indemnity Costs</u>	<u>Total Costs</u>
a.	Utica	\$900,000	\$50,000	\$950,000
b.	Argonaut	\$280,251	\$14,749	\$295,000
c.	Hartford	\$248,582	\$11,418	\$260,000

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d.	PEIC	\$74,300	\$5,700	\$80,000
e.	Liberty	\$93,438	\$3,812	\$97,250

Such payments shall be made by check delivered for receipt by the due date to the Winterthur contact address indicated in Section XVIII; or by wire transfer completed by the due date to Winterthur's account, in accordance with instructions that Winterthur shall provide to the Party Insurers by no later than forty-five (45) days after the Effective Date. The Party Insurers shall allocate such reimbursement amounts among their Policies in accordance with their customary practices in the ordinary course of business and with this Agreement, and upon request Winterthur shall provide all information reasonably necessary to permit such allocation. The reimbursement amounts actually paid hereunder and so allocated shall impair the Occurrence Limits and Aggregate Limits of the reimbursing Party Insurers in accordance with the terms of Section III.A. and of the Policies, and such reimbursement amounts shall reduce by the same amounts the total net Defense Costs and Indemnity Costs that may impair the Occurrence Limits and Aggregate Limits of the Policies in the UK Insurance Program.

3. In addition to the cash payments specified above, Utica shall provide a credit to Winterthur in the amount of \$1,194,000, against which Utica shall pay, in addition to Utica's own Contribution Percentage, the UK Insurance Program's Contribution Percentage for Defense Costs and Indemnity Costs as set forth in Sections II.E.1. and F.1., until Utica has paid the full amount of such credit through such additional payments. The additional amounts Utica pays for the UK Insurance Program's Contribution Percentage shall apply toward the Exhaustion of the applicable limits of liability relating to the Utica Policies under which they are paid, in accordance with Section III.A., and they shall not apply toward the Exhaustion of such applicable limits relating to the Policies in the UK Insurance Program. If the total amount of Utica's payments under this Section is less than the full amount of the aforesaid credit, then Utica shall pay the remaining balance of that credit, by check delivered to the Winterthur contact address in Section XVIII, within 30 days after the last payment for Defense Costs or Indemnity Costs under this Agreement.

4. The cash payments and the credit specified in Sections 2 and 3 above shall be in consideration for all Defense Costs and Indemnity Costs paid or Incurred before May 20, 2005 by Winterthur on behalf of itself and the UK Insurance Program, and such payments and credit shall fully satisfy the other Party Insurers' obligations with respect to such Defense Costs and Indemnity Costs. Effective upon receipt of the full amount specified for each Party Insurer in Section 2 above, Winterthur, on behalf of itself and (to the fullest extent of its authority) of its past, present and future employees, officers, directors, principals, parents, subsidiaries, affiliates, associated corporations, agents, representatives, predecessors, successors and assigns, expressly agrees to waive, release, acquit and forever discharge all claims against that Party Insurer in connection with Defense Costs and Indemnity Costs paid or Incurred before May 20, 2005, including any bad faith, extracontractual liability or punitive damages claim, known or unknown, whether arising by contract, regulation, statute, common law, or otherwise.

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5. a. Winterthur and Howden Buffalo each represents that as of the Effective Date no other quota-share participant in the UK Insurance Program has paid for any portion of the Defense Costs and Indemnity Costs Incurred before May 20, 2005.

b. Winterthur and Howden Buffalo further agree that they will not pursue any other quota-share participant in the UK Insurance Program for any portion of the Defense Costs and Indemnity Costs Incurred before May 20, 2005 that is shown to be due from Utica.

6. All Defense Costs and Indemnity Costs Incurred on or after May 20, 2005, shall be paid in accordance with this Agreement. Any dispute relating to the reasonableness of such costs shall be resolved in accordance with Section XV.A.

C. Howden Buffalo will have no obligation to make any payments for, *inter alia*, reimbursements, deductibles, self-insured retentions, retrospective premiums or any other self-insurance feature in connection with or arising out of payments made by a Party Insurer pursuant to this Agreement, except as otherwise provided in Sections III.A.3. or 4. or Section V.

D. Upon the Exhaustion of any Policy, the Party Insurers' and/or the UK Insurance Program's Contribution Percentages for Defense Costs and Indemnity Costs shall be governed by Sections II.E.2. and II.F.2., respectively. If necessary in order to fund Defense Costs or Indemnity Costs, Howden Buffalo may advance payments that it contends are owed by insurers or other entities that are not Parties to this Agreement, without prejudice to its rights under this Agreement or against such other entities.

E. 1. Except as otherwise provided for Governmental Claims in Section V., the Contribution Percentages for Defense Costs Incurred on or after May 20, 2005 are as follows:

a.	Utica:	58.61%
b.	UK Insurance Program:	22.11%
c.	Argonaut Insurance Companies:	7.97%
d.	Hartford Accident and Indemnity Company:	6.17%
e.	Pacific Employers Insurance Company :	3.08%
f.	Liberty Mutual Insurance Company:	2.06%

*Provided, however,* that Utica shall pay a combined Contribution Percentage of 80.72%, and neither Winterthur nor any other quota-share participant in the UK Insurance Program shall be obligated to contribute to Defense Costs under this Agreement, until the credit specified in Section II.B.3. is fully paid. It is understood and agreed that as soon as

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Utica has paid the full amount of this credit, Utica shall notify Winterthur and Howden Buffalo in writing, and Winterthur shall immediately resume paying its quota share of the UK Insurance Program's 22.11% Contribution Percentage for Defense Costs, plus an additional portion thereof if it has separately agreed with the other quota-share participants in the UK Insurance Program to advance such additional portion on their behalf (it being expressly understood that Winterthur's obligation under this Agreement is limited to its own quota share). Any such additional portion of the U.K. Insurance Program's 22.11% Contribution Percentage that is not paid by Winterthur shall be Howden Buffalo's responsibility, subject to its rights of recovery against any quota-share participant obligated for that portion.

2. Upon the Exhaustion of the last Policy of a Party Insurer or the UK Insurance Program in a particular policy period, the Contribution Percentages for Defense Costs Incurred after the date of such Exhaustion shall be recalculated by the Lead Carrier. The recalculated Contribution Percentage for each Party Insurer or the UK Insurance Program shall be the following fraction: (a) the numerator shall be the number of months in the policy periods of all Policies issued by that Party Insurer or by the UK Insurance Program whose underlying limits (if any) are Exhausted but whose upper limits are not Exhausted ("Policies Currently On Risk"), and (b) the denominator shall be the total number of months in the policy periods of all the Policies Currently On Risk; *provided, however*, that where the policy period of an Umbrella Policy overlaps but does not coincide with one or more immediately underlying Primary Policies' policy periods, then the policy period of the Umbrella Policy shall be counted only to the extent that it overlaps with the policy period of an Exhausted Primary Policy underlying that Umbrella Policy. Accordingly, the total of the Party Insurers' and the UK Insurance Program's respective Contribution Percentages for Defense Costs will remain 100% until all the Policies have been Exhausted; *provided, however*, that upon Exhaustion of a Policy within the UK Insurance Program, Winterthur's own share of the UK Insurance Program's Contribution Percentage for Defense Costs shall be recalculated in accordance with the percentage limits of the applicable Policies stated in Exhibit A, Table II, and its payments for Defense Costs shall be subject to Section II.K.

3. Each Party shall timely pay its share of any Defense Costs in accordance with terms agreed between the Lead Carrier and defense counsel, including any terms governing penalties for late payment. Unless otherwise agreed between a Party and defense counsel, if a Party fails to pay its share of any undisputed Defense Costs within sixty (60) days after receipt of the original Defense Cost invoice, then absent a showing of good cause the Party also shall be responsible for payment of simple interest accruing from the due date of the invoice at the annual prime rate published in the Wall Street Journal on such due date; and if the Party fails to make such payment with interest within thirty (30) days after notice of default, then Howden Buffalo or the Lead Carrier may avail itself of the dispute resolution procedures under Section XV., and the prevailing party shall be entitled to an award of its reasonable counsel fees and other expenses incurred in resolving the dispute pursuant to Section XV.

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F. 1. Except as otherwise provided for Governmental Claims in Section V., Contribution Percentages for Indemnity Costs shall be calculated as a fraction for each Policy within whose policy period any portion of the claimant's Injury Allocation Period falls (including each Umbrella Policy, but only to the extent that it overlaps with the policy period of an Exhausted Primary Policy). The numerator of that fraction shall be the number of months in the claimant's Injury Allocation Period for which that Policy affords coverage, and the denominator shall be the total number of months in the claimant's Injury Allocation Period. *Provided, however,* that Utica shall pay the UK Insurance Program's Contribution Percentage in addition to its own until the credit specified in Section II.B.3. is fully paid, allocating such additional payments among the Utica Policies in accordance with their customary practices in the ordinary course of business and with this Agreement, and applying such payments to the limits of the Utica Policies in accordance with the terms of Section III.A. and of the affected Policies. Neither Winterthur nor the other quota-share participants in the UK Insurance Program shall be obligated to contribute to Indemnity Costs, until the credit specified in Section II.B.3. is fully paid. It is understood and agreed that as soon as Utica has paid the full amount of this credit, Utica shall notify Winterthur and Howden Buffalo in writing, and Winterthur shall immediately resume paying its quota share of the UK Insurance Program's Contribution Percentage for Indemnity Costs, plus an additional portion thereof if it has separately agreed with the other quota-share participants in the UK Insurance Program to advance such additional portion on their behalf (it being expressly understood that Winterthur's obligation under this Agreement is limited to its own quota share). Any such additional portion of the U.K. Insurance Program's Contribution Percentage for Indemnity Costs that is not paid by Winterthur shall be Howden Buffalo's responsibility, subject to its rights of recovery against any quota-share participant obligated for that portion.

2. Upon the Exhaustion of either Hartford Policy #40 JPRP 30712 E or Liberty Mutual Policy # RG1-681-004076-076, the Injury Allocation Period shall exclude the period of the Exhausted Policy. Section III.C. shall govern upon the Exhaustion of any other Primary Policy.

3. For purposes of calculating Contribution Percentages for Indemnity, the number of months that the Policies afford coverage are as follows:

a.	Utica:	228 months
b.	UK Insurance Program:	86 months
c.	Argonaut:	31 months
d.	Hartford:	24 months
e.	PEIC:	12 months
f.	Liberty Mutual:	8 months

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*Provided, however,* that the number of months that the Policies of Utica afford coverage for Governmental Claims shall be governed by Section V. If the total of the Party Insurers' respective Contribution Percentages for Indemnity Costs for a particular Asbestos-Related Bodily Injury Claim is less than 100%, then Howden Buffalo shall be responsible for the remaining portion of Indemnity Costs for that Asbestos-Related Bodily Injury Claim.

4. If a Party Insurer fails to pay its share of any Indemnity Costs within thirty (30) days after receipt of an Indemnity Cost allocation, Howden Buffalo may advance the amount in default. The Party Insurer shall then owe to Howden Buffalo the amount of the advanced payment plus simple interest accruing from the date of the payment at 8% annually. If the Party Insurer fails to cure the default within 30 days after Howden Buffalo's advanced payment, the matter shall be subject to the dispute resolution procedures under Section XV., and the prevailing Party shall be entitled to an award of its counsel fees and other expenses incurred in such procedures.

G. The claimant's Injury Allocation Period shall be based on the most reliable information available. If the most reliable information regarding the claimant's First Exposure Date that is available can only be expressed in years, it shall be assumed that the claimant's First Exposure Date will be January 1 of the earliest given year. Evidence of the Injury Allocation Period shall be accepted in the following order of priority.

1. Judgments in the subject claim including findings of fact by a court or a jury.
2. Contemporaneous business records or government records.
3. Trial testimony of plaintiff.
4. Trial testimony of a co-worker witness.
5. Trial testimony of any other witness.
6. The most-recent sworn statement of plaintiff, including deposition testimony of plaintiff taken in the same lawsuit, deposition testimony of plaintiff taken in another lawsuit, or affidavit testimony of plaintiff.
7. The most-recent sworn statement of any co-worker witness, including deposition testimony of a co-worker witness taken in the same lawsuit, deposition testimony of a co-worker witness taken in another lawsuit, or affidavit testimony of a co-worker.
8. Responses to requests for admission.
9. Interrogatory answers.
10. Deposition or affidavit testimony of anyone other than a plaintiff or a co-worker witness (including without limitation, spouses, children, executors, etc.).

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11. Statements of plaintiff, plaintiff's counsel, or any other representative of plaintiff, indicating exposure dates, if accompanied by reasonable indicia of product identification evidence at an exposure site.
12. Social Security printouts or equally reliable indicator of employment dates.
13. Plaintiff's complaint.

In the absence of any information regarding the claimant's First Exposure Date, that date is presumed to be June 1, 1961, except with respect to Governmental Claims, for which the claimant's presumed First Exposure Date shall be governed by Section V.

H. Payment of Defense Costs by a Party Insurer shall not erode or reduce the applicable limits available for payment of Indemnity Costs under any Non-Wasting Policy, but may erode and reduce the applicable limits available for payment of Indemnity Costs under Wasting Policies in accordance with Section III.D. below. *Provided, however*, that any payments (including payments for Defense Costs) made for the \$100,000 per occurrence deductible under Argonaut Policy No. CL87-395-000047 will result in a corresponding reduction in the Aggregate Limit of that Policy.

I. 1. A Party Insurer will have no responsibility under this Agreement for the payment of Indemnity Costs associated with an Asbestos-Related Bodily Injury Claim if the claimant's First Exposure Date is determined in accordance with Section II.G. to fall after the end of the last Policy issued by that Party Insurer, or if the claimant's date of death is determined in accordance with Section II.G. to fall before the inception date of the first Policy issued by that Party Insurer, except as otherwise determined in accordance with Section XI.C. if additional policies are found. (By way of example, under the presently known Utica Policies, if a claimant's First Exposure Date is after June 1, 1980, or if the date of death is before June 1, 1961, then Utica will have no responsibility under this Agreement for Indemnity Costs with respect to that claimant.)

2. A Party Insurer will have no responsibility under this Agreement for the payment of Defense Costs associated with an Asbestos-Related Bodily Injury Claim: (a) if the complaint contains allegations establishing a First Exposure Date after the end of the last Policy issued by that Party Insurer or a date of death before the inception date of the first Policy issued by the Party Insurer, or (b) after the date that the claimant's First Exposure Date is determined in accordance with Section II.G. to fall after the end of the last Policy issued by that Party Insurer, or if the claimant's date of death is determined in accordance with Section II.G. to fall before the inception date of the first Policy issued by that Party Insurer, except as otherwise determined in accordance with Section XI.C. if additional policies are found. (By way of example, under the presently known Utica Policies, if a claimant's First Exposure Date is determined to fall after June 1, 1980, or if the date of death is determined to fall before June 1, 1961, then Utica will have no further responsibility under this Agreement with respect to that claimant.) In such event, as to any Defense Costs for that Asbestos-Related Bodily Injury Claim that are Incurred after the date of such determination, the other Party Insurers' and/or the UK



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Insurance Program's Contribution Percentages shall increase proportionally so that their total Contribution Percentages for Defense Costs for that Asbestos-Related Bodily Injury Claim will remain 100%.

J. The Lead Carrier, with input from National Coordinating Counsel and Howden Buffalo, shall calculate all the Party Insurers' Contribution Percentages for Indemnity Costs for each Asbestos-Related Bodily Injury Claim and shall promptly communicate the percentages to all Parties. If Howden Buffalo or any Party Insurer disagrees with the calculation of Contribution Percentages, the disputing Party shall provide reasonable notice of its dispute to all other Parties. Pending resolution of the dispute, Indemnity Costs shall be paid in accordance with the assigned percentage, and the disputing Party shall be deemed to have reserved its right to request recalculation and/or reimbursement of the disputed percentage, as the case may be. Subsequently, the Lead Carrier or National Coordinating Counsel shall provide the disputing Party, Howden Buffalo (if not the disputing Party) and all other Parties with a summary of the evidence relied upon to determine the Contribution Percentages. The disputing Party may, at its own expense, review the actual evidence in addition to the summary provided. Any disputes that remain shall be resolved in accordance with Section XV.

K. It is expressly understood and agreed that Winterthur enters into this Agreement on its own account and not as agent or otherwise on behalf of any other quota-share participant in the UK Insurance Program, nor of any other insurer that is not a Party. Nothing in this Agreement shall obligate Winterthur to contribute more than its own total quota-share percentage of the Policy limits, as indicated in Exhibit A, Table II, towards the UK Insurance Program's total Contribution Percentage on any Asbestos-Related Bodily Injury Claim. Any past, present or future payment by Winterthur that exceeds such quota-share percentage is understood and agreed to be solely an advance that is subject to reimbursement to Winterthur by the other quota-share participants in accordance with the terms of their policies and with any related agreements between those participants, Winterthur and Howden Buffalo. Any disputes between Winterthur and Howden Buffalo with respect to Winterthur's proper quota share of the UK Insurance Program or with respect to the amounts subject to reimbursement to Winterthur shall be resolved in accordance with Section XV.A. If any other quota-share participant's portion of the UK Insurance Program's total Contribution Percentage for Defense or Indemnity Costs is not paid, that portion of Defense or Indemnity Costs shall be Howden Buffalo's responsibility, subject to its rights of recovery against that quota-share participant. In no circumstance (including the bankruptcy of Howden Buffalo) shall any Party Insurer be responsible in any way for such quota-share participant's portion of the UK Insurance Program's total Contribution Percentage under this Agreement.

**III. TREATMENT OF PAYMENTS/EXPIRATION OF A POLICY'S OBLIGATIONS**

A. 1. Indemnity Costs paid under a Policy shall apply toward the Occurrence Limits and Aggregate Limits stated in that Policy.

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2. Defense Costs paid under a Policy shall only apply toward the Occurrence Limits and Aggregate Limits stated in that Policy if it is a Wasting Policy, except as otherwise provided in Section II.H. with respect to deductible payments under Argonaut Policy No. CL87-395-000047.

3. All Asbestos-Related Bodily Injury Claims handled under this Agreement shall be treated as arising from a single occurrence for each annual policy period for the purpose of calculating Policy Occurrence Limits, umbrella self-insured retention amounts, and impairment and Exhaustion of the limits of liability underlying any Umbrella Policy or any excess policy issued by Utica or any of its affiliates. Howden Buffalo shall be responsible for the self-insured retention under each Utica Umbrella Policy unless such self-insured retention has been previously paid by one or more of the Other Insureds, it being understood that only one such self-insured retention shall be required between Howden Buffalo and the Other Insureds.

4. All Asbestos-Related Bodily Injury Claims handled under this Agreement shall be treated as arising from a single occurrence for each annual policy period for the purpose of calculating Policy Occurrence Limits, and impairment and Exhaustion of the limits of liability underlying any Umbrella Policy or any excess policy issued by the Other Carriers. The impairment and Exhaustion of any deductibles, retrospective premiums and other self-insurance features under the Policies of each of the Other Carriers shall be governed by a separate agreement between Howden Buffalo and that Other Carrier expressly governing the application of a self-insurance feature to this Agreement; *provided, however*, that no such separate agreement shall reduce the Occurrence Limits afforded by any Other Carrier's Policy for Asbestos-Related Bodily Injury Claims.

5. It is expressly understood that payments under this Agreement shall not impair or Exhaust the Occurrence Limits applicable to the Other Insureds, nor shall payments on account of the Other Insureds impair or Exhaust the Occurrence Limits applicable to Howden Buffalo, except as provided in Section III.A.3. It is further understood, however, that payments (a) under any Policy, of judgments and reasonable settlements for product liability claims against Other Insureds, and (b) under a Wasting Policy, of reasonable and necessary fees, expenses and costs incurred in the defense of product liability claims against Other Insureds, may impair or Exhaust the Aggregate Limits, if any, applicable to Howden Buffalo; and that such payments under this Agreement may impair or Exhaust the Aggregate Limits, if any, applicable to the Other Insureds.

B. 1. Except as otherwise provided in Section B.3., below, each Party Insurer shall provide to Howden Buffalo and to any other Party that so requests in writing, quarterly reports of the impairment of the Occurrence Limits and Aggregate Limits applicable to the Asbestos-Related Bodily Injury Claims under that Party Insurer's Policies.

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2. Upon request in writing, a Party Insurer shall provide Howden Buffalo or another Party with documentation and/or information supporting such quarterly impairment reports and shall permit Howden Buffalo or a directly overlying Party Insurer to conduct reasonable due diligence to confirm the accuracy of its impairment calculations.

3. When any Party Insurer determines that the unimpaired balance of the applicable Occurrence Limits or Aggregate Limits of any Policy is equal to or less than \$100,000, that Party Insurer shall: (a) as soon as reasonably practicable, give written notice to all Parties; and (b) provide Howden Buffalo upon request with appropriate supporting documentation regarding the impairment of the Occurrence Limits and Aggregate Limits, detailing the payments allocated to the Policy. Thereafter, the Party Insurer giving such notice shall provide monthly reports to all Parties regarding the impairment of the Occurrence and Aggregate Limits of the Policy involved and, upon Exhaustion of any such limits, shall provide notice of that fact to all Parties. *Provided, however,* that the Lead Carrier and Howden Buffalo may agree with a Party Insurer that it may provide impairment reports at less frequent intervals than those provided in this Section and in Section III.B.1.

4. Notwithstanding any other provision in this Agreement, all Parties reserve any and all rights to contest or otherwise challenge the impairment or alleged Exhaustion of any Policy, within ninety (90) days after receiving an impairment report pursuant to Section B.1. or 3. above. Any dispute regarding the impairment or Exhaustion of any of the Policies shall be resolved through negotiation or if necessary through a dispute resolution proceeding as provided in Section XV.A.; *provided, however,* that it shall be a defense in any such proceeding that the Party Insurer acted reasonably, in the exercise of appropriate business judgment in connection with the appropriate defense and/or settlement of a particular claim, and without arithmetical or other ministerial error.

C. If any Party Insurer's Policy is Exhausted, the Contribution Percentage for Indemnity Costs applicable to that period shall be paid by a Party Insurer that issued an Umbrella Policy immediately excess to that Policy. If no Party Insurer provides coverage for that policy period, the Contribution Percentage for Indemnity Costs applicable to that period shall be Howden Buffalo's responsibility, subject to its right to seek reimbursement from any other entity not subject to this Agreement.

D. If any Party Insurer's Policy is Exhausted and that Party Insurer issued a Wasting Policy immediately excess to that Primary Policy, the Party Insurer may allocate a portion of its Contribution Percentage for Defense Costs set forth in Section II.E.1. to the Wasting Policy, thus reducing the remaining applicable limits available for payment of Indemnity Costs under the Wasting Policies; *provided, however,* that the fraction of its Contribution Percentage that the Party Insurer may allocate to such Wasting Policy shall not exceed the number of applicable months in the policy period of the Wasting Policy (calculated in accordance with Section II.E.2.), divided by the number of such applicable months in the policy periods of all remaining unexhausted Policies issued by that Party

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Insurer. Each Party Insurer shall pay its Contribution Percentage for Defense Costs as set forth in Sections II.E.1. and E.2 so long as it has one or more unexhausted Policies applicable to the Asbestos-Related Bodily Injury Claim in question, subject to Section II.K. with respect to Winterthur.

E. Upon the Exhaustion of all applicable Occurrence or Aggregate Limits for a Party Insurer's Policies, its obligation to pay Defense Costs and/or Indemnity Costs and/or to participate in the handling of Asbestos-Related Bodily Injury Claims under this Agreement shall cease, in accordance with Sections II.E.2. and III.C.

F. The assumption of any obligations under this Agreement by Howden Buffalo shall be with the express reservation by Howden Buffalo of the right to assert any claims it has against any insurer other than the Party Insurers, and against the Party Insurers under any insurance policy not listed in Exhibit A that is actually discovered, or, in the event of a Party Insurer's insolvency, against its estate or an insolvent insurer or insurance guaranty fund. Howden Buffalo expressly reserves any rights under any excess policies that are not identified as Policies on Exhibit A for Defense Costs and Indemnity Costs for any policy period(s) in which the Occurrence and/or Aggregate Limits of the underlying Policy or Policies have been Exhausted for any reason.

**IV. CLAIM HANDLING PROTOCOL**

A. The Lead Carrier, any other affected Party Insurers, and Howden Buffalo shall work together to defend the Asbestos-Related Bodily Injury Claims, but the Lead Carrier shall control the defense in good faith, starting on the Effective Date. Howden Buffalo may assist the Lead Carrier and National Coordinating Counsel in the formulation and implementation of a national defense strategy and trial strategy, with input from the other Party Insurers. With respect to the settlement or trial of any Asbestos-Related Bodily Injury Claim or Claims, the Lead Carrier shall in good faith make all final decisions concerning settlement or trial, in consultation with National Coordinating Counsel. Howden Buffalo may advise the Lead Carrier of its position relative to settlement or trial, and the Lead Carrier shall inform Howden Buffalo and any other Party Insurers sharing the Indemnity Costs for the claim of all relevant facts and respond to all reasonable inquiries with respect to settlement or trial decisions and strategy in a timely fashion so as to permit Howden Buffalo and such other affected Party Insurers to have an opportunity to formulate and communicate their views on such matters to the Lead Carrier. In the end, the Lead Carrier may in good faith defend and reasonably settle any Asbestos-Related Bodily Injury Claim(s) over the objection of Howden Buffalo or any other affected Party Insurer, unless the Lead Carrier's Policies provide no coverage (a) for Defense Costs, or (b) for Indemnity Costs, for the particular Asbestos-Related Bodily Injury Claim. Any dispute concerning the propriety or reasonableness of the Lead Carrier's settlement and trial decisions shall be subject to Section XV. *Provided, however*, that it shall be a defense in any arbitration concerning a particular claim that the Lead Carrier acted reasonably, in the exercise of appropriate business judgment in connection with the appropriate settlement and/or trial decisions of such claim, and without making any arithmetical or other ministerial error.

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B. If the Lead Carrier's policies provide no coverage (a) for Defense Costs, or (b) for Indemnity Costs, for an Asbestos-Related Bodily Injury Claim, then Howden Buffalo, with the consent (not to be unreasonably withheld) of the Party Insurer with the largest Contribution Percentage for Indemnity Costs for that claim, may in good faith negotiate a settlement of the claim, without the Lead Carrier's input.

C. If the Lead Carrier gives written notice to Howden Buffalo of its intention to withdraw as Lead Carrier or to cease funding Defense and Indemnity Costs because of the Exhaustion of all of its Policies, Howden Buffalo shall within sixty (60) days of receiving notice of such withdrawal work with the other Party Insurers to designate an insurer to assume the responsibility of Lead Carrier, or shall designate itself to assume such role. If the Lead Carrier has not given notice of withdrawal but no longer has the largest Contribution Percentage for Defense Costs because of the Exhaustion of some or all of its Policies, then the Party Insurer with the largest Contribution Percentage for Defense Costs may give written notice to the Lead Carrier and to Howden Buffalo of its intention to become Lead Carrier, and shall work with all Parties in effecting a transition.

D. National Coordinating Counsel shall agree to abide by the guidelines attached as Exhibit C, or any reasonable modification of the guidelines as may be agreed by Howden Buffalo and the Lead Carrier with input from the other Party Insurers. Defense Costs for National Coordinating Counsel's fees and expenses shall be paid in accordance with this Agreement, subject to the following supplemental provisions:

1. Hourly rates for National Coordinating Counsel shall be the rates as agreed by the Lead Carrier and Riley, Hewitt & Sweitzer on the Effective Date.
2. All expenses incurred by National Coordinating Counsel in defending Asbestos-Related Bodily Injury Claims shall be paid as Defense Costs under this Agreement, provided they were incurred in accordance with the guidelines attached as Exhibit C or any agreed modification thereof, or otherwise approved by the Lead Carrier.
3. The Lead Carrier shall have the ability to approve or decline any rate increases for National Coordinating Counsel; *provided however*, that Howden Buffalo may independently pay any rate increase that the Lead Carrier declines.

E. The duties and responsibilities of National Coordinating Counsel may include those set forth below, as well as any others that may be further agreed by Howden Buffalo and the Lead Carrier:

1. Coordinating and supervising all discovery relating to the Asbestos-Related Bodily Injury Claims, including document review, preparation of discovery responses on behalf of Howden Buffalo and decisions regarding affirmative discovery. Unless the

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Lead Carrier so authorizes, this function shall not include attendance at depositions of plaintiffs.

2. Coordination of expert witnesses including the development of a panel of expert witnesses to testify on behalf of Howden Buffalo and selecting, preparing, and working with expert witnesses. This includes: (a) recommending what experts are necessary with respect to each claim; (b) assisting such experts in gaining a familiarity with the facts relevant to each claim; (c) assisting such experts in preparing expert reports; (d) preparing such experts for deposition or trial testimony; (e) defending depositions of such experts; and (f) determining whether local counsel or National Coordinating Counsel should take depositions of experts proffered by other parties.
3. Coordinating all communications and development of fact witnesses and corporate designees of Howden Buffalo. It is anticipated that National Coordinating Counsel shall be the sole outside contact with such witnesses and shall make such witnesses available to local counsel depending on the facts with respect to a particular claim. National Coordinating Counsel shall also be responsible for preparing and defending all 30(b)(6) depositions and obtaining all verifications necessary to append to discovery or pleadings.
4. Recommending trial strategy to the Lead Carrier and Howden Buffalo. The Lead Carrier shall consider the recommendations of Howden Buffalo, the other Party Insurers and National Coordinating Counsel in its formulation of trial strategy, and the Lead Carrier and Howden Buffalo will use their best efforts to agree to trial strategy. National Coordinating Counsel may assist local defense counsel in the implementation of trial strategy.
5. Making recommendations regarding settlement to Howden Buffalo, the Lead Carrier, and, if requested in writing, any other Party Insurer.
6. Making recommendations to Howden Buffalo and the Lead Carrier and the other Party Insurers regarding selections of local defense counsel for Asbestos-Related Bodily Injury Claims.
7. Maintaining a database of information concerning Asbestos-Related Bodily Injury Claims to which all Parties will have access. The rates for data input and all other costs relating to this database shall be as specified by the Lead Carrier.
8. Providing quarterly reports to all Parties concerning Asbestos-Related Bodily Injury Claims, responding promptly to reasonable and appropriate requests for information regarding the Asbestos-Related Bodily Injury Claims from the Parties, and forwarding to

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all Parties who ask in writing to receive them, at the expense of such Parties, copies of all initial complaints, motions, pleadings, expert reports, deposition summaries, other discovery, legal research, and investigative materials so long as doing so would not risk a waiver of attorney-client privilege or work product protection. National Coordinating Counsel shall also provide all Parties with prompt notice of any trials and/or any settlement demands and offers, and of any other events that it deems significant.

9. National Coordinating Counsel may request such assistance from local defense counsel with respect to any of the above-mentioned functions as National Coordinating Counsel deems necessary or advisable, unless the Lead Carrier disapproves such assistance.

F. The Lead Carrier, in consultation with Howden Buffalo, shall select all local defense counsel to respond to the Asbestos-Related Bodily Injury Claims, including separate counsel from any Other Insured when necessary to protect the separate interests of Howden Buffalo. Other Party Insurers may provide the Lead Carrier advice and recommendations in this process. The Lead Carrier shall use reasonable good-faith efforts to resolve any disagreements with Howden Buffalo concerning selection of counsel, *provided, however*, that if Howden Buffalo and the Lead Carrier are not able to agree on the selection of counsel, after reasonable good faith efforts to resolve their disagreement, the Lead Carrier shall have the authority to select appropriate local defense counsel in good faith. All local defense counsel shall agree to abide by the guidelines attached as Exhibit C, or any reasonable modification of the guidelines as may be agreed by Howden Buffalo and the Lead Carrier. No other guidelines shall apply.

G. Defense counsel shall report simultaneously to the Lead Carrier and Howden Buffalo, and to other Party Insurers upon request, with respect to Asbestos-Related Bodily Injury Claims. Such reports shall be treated as protected joint-defense communications in accordance with Section IV.J.

H. The Lead Carrier shall instruct defense counsel to maintain the litigation files for a minimum 10-year period after resolution of each claim handled under this Agreement. Documentation must be satisfactory to support settlement of a claim or group of claims and may include pleadings, interrogatory answers and deposition or trial testimony of the underlying plaintiff(s), medical reports, proof of exposure to a Buffalo Forge Asbestos-Containing Product, and releases.

I. As part of its cooperation duties under this Agreement, the Lead Carrier agrees to negotiate in good faith reasonable supplemental protocols for the involvement of the Other Party Insurers, or such other insurers as may contribute to the funding of Defense Costs and Indemnity Costs. Such protocols shall include specified settlement consent limits, reasonable notice and consultation provisions, and such other provisions as the Other Party Insurers may demonstrate are justified so as to permit them to satisfy reasonable reinsurance and other conditions necessary for their participation in the funding of Defense and Indemnity Costs.

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J. The Parties recognize that they share common interests in defending the Asbestos-Related Bodily Injury Claims, and this Agreement shall be deemed a joint-defense agreement with respect to Asbestos-Related Bodily Injury Claims. The Parties shall take all necessary and proper steps to preserve the attorney-client privilege and work product protection applicable to any communications with respect to Asbestos-Related Bodily Injury Claims, and they agree that their communications with each other and with defense counsel concerning the substance of Asbestos-Related Bodily Injury Claims are presumptively privileged and confidential joint-defense communications. No conduct or communication by the Parties or by defense counsel in implementing this Agreement shall be deemed to waive any privilege or protection from compelled disclosure, and any Party that receives a request or demand to disclose protected information relating to Asbestos-Related Bodily Injury Claims shall promptly notify all other affected Parties in accordance with Section XVIII. Some or all of the Parties may supplement this Section IV.J. with a separately executed joint defense and nonwaiver agreement. The Lead Carrier shall inform all defense counsel of the terms of this Section IV.J. and of any applicable supplementary agreement.

K. 1. If an asbestos-related claimant names Howden Buffalo solely as a successor to an entity other than Buffalo Forge, the claim or suit shall initially be assigned to Winterthur for defense and shall not be deemed subject to this Agreement. Examples of such claims or suits are set forth in Exhibit B, Schedule I. That schedule is a list of examples only and does not override the terms of this Agreement.

2. If an asbestos-related claimant names Howden Buffalo (a) alone, and/or (b) as successor to Buffalo Forge alone or in combination with any other entity, the claim or suit shall initially be assigned to the Lead Carrier for defense under this Agreement and shall be deemed subject to this Agreement. Examples of such claims or suits are set forth in Exhibit B, Schedule II. That schedule is a list of examples only and does not override the terms of this Agreement.

3. If a claim or suit described in Section K.1. above is later determined through reliable evidence to involve only a Buffalo Forge Asbestos-Containing Product, then Winterthur may in good faith tender it to the Lead Carrier for defense and indemnity under this Agreement; likewise, if a claim or suit described in Section K.2. above is later determined through reliable evidence to involve only a product that is not a Buffalo Forge Asbestos-Containing Product, then the Lead Carrier may in good faith tender it to Winterthur for defense and indemnity outside this Agreement.

4. If the Lead Carrier or Winterthur, as the case may be, accepts a claim or suit tendered pursuant to Section K.3. above, then it and any other Party that has not paid its appropriate Contribution Percentage therefor shall also reimburse the appropriate share of any Defense Costs or Indemnity Costs paid by any other Party on account of the tendered claim or suit.



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5. If the Lead Carrier or Winterthur, as the case may be, declines a claim or suit tendered pursuant to Section K.3. above, or declines to reimburse all or a portion of the costs previously paid on account thereof, then the tendering Party Insurer may invoke the dispute resolution procedures under Section XV.A. If it is determined that a payment is due to the tendering Party Insurer, the payment shall be made together with simple interest accruing from the date of the tender at 8% annually, in addition to the costs and attorneys' fees provided under Section XV.A.

6. If an asbestos-related claimant names Howden Buffalo in two or more separate entries in the caption of a complaint, with separate paragraphs in the complaint describing each entry in separate capacities that fall within both Sections K.1 and K.2., respectively, then unless the Lead Carrier and Winterthur specifically agree otherwise, the suit shall initially be assigned to the Lead Carrier for defense under this Agreement, but National Coordinating Counsel and local counsel shall be instructed to segregate any Defense Costs Incurred in defending Howden Buffalo in a capacity described in Section K.1. and to bill such Defense Costs separately to Winterthur. Any disputes arising with respect to such a suit shall be resolved in accordance with the dispute resolution procedures under Section XV.A.

**V. TREATMENT OF "SALES TO THE UNITED STATES GOVERNMENT" EXCLUSION**

A. 1. Any Governmental Claims arising solely and exclusively out of alleged exposure to a Buffalo Forge Asbestos-Containing Product sold pursuant to a contract between Buffalo Forge and any agency or entity of the United States Government will be covered under the applicable Utica Umbrella Policies, if such Policies are not Exhausted, instead of the Utica Primary Policies. Utica's Contribution Percentage for Defense Costs for any such Governmental Claim shall be reduced to 53.60%, and the other Contribution Percentages for Defense Costs shall be proportionally increased, so that total Contribution Percentages for Defense Costs remain 100%. The Injury Allocation Period for purposes of calculating the Contribution Percentages for Indemnity Costs shall begin on the later of (a) the claimant's First Exposure Date and (b) January 6, 1965; accordingly, the Policies of Utica are deemed to afford coverage for 186 months, while the Policies of the Other Carriers are deemed to afford coverage for the periods stated in Section II.F.3., all subject to the provisions of Section III. governing Exhaustion.

2. For all other Governmental Claims, the Party Insurers' and/or the UK Insurance Program's Contribution Percentages for Defense and Indemnity Costs shall be calculated as follows: (a) as to 60% of such costs, Section V.A.1. shall govern, and (b) as to 40% of such costs, Sections II.E. and II.F. shall govern. All calculations shall be subject to the provisions in Section III. governing Exhaustion.

B. This Section V. is not intended to alter in any way the treatment under the Agreement of any claims that are not Governmental Claims.

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C. If a Utica Umbrella Policy is Exhausted before the underlying Primary Policy/ies is/are exhausted, no Utica Policy shall assume any share that would have been allocated under Section V.A. to the Utica Umbrella Policies in the absence of such Exhaustion, but rather the other Party Insurers' and the UK Insurance Program's Contribution Percentages for Defense Costs shall be proportionally increased, so that total Contribution Percentages for Defense Costs remain 100%.

D. If it is not clear at the outset whether or not a Governmental Claim belongs in Section V.A.1. or Section V.A.2., the case will be defended initially as provided in Section V.A.2. If the Parties subsequently agree that a Governmental Claim belongs in Section V.A.1., the Contribution Percentages for Defense and/or Indemnity Costs for that claim shall be as provided in Section V.A.1. and such Contribution Percentages shall apply retroactively to the first date of the claim.

E. If it is not clear at the outset whether or not a claim is a Governmental Claim, the case will be defended initially as a non-Governmental claim. If the Parties subsequently agree or an arbitrator determines pursuant to Section XV.A. that such a claim is a Governmental Claim, the Contribution Percentages for Defense and/or Indemnity Costs shall be as provided in either Section V.A.1. or Section V.A.2., depending on the nature of the Governmental Claim, and such Contribution Percentages shall apply retroactively to the first date of the claim.

F. In the event a claimant alleges exposure that, if alleged alone, would constitute a Governmental Claim, and exposure that, if alleged alone, would not constitute a Governmental Claim, the case will be treated as not being a Governmental Claim for the purpose of calculating Contribution Percentages for Defense Costs. If Indemnity Costs are incurred in such a claim because it has been determined in accordance with Section II.G. that the claimant was exposed both (1) to a Buffalo Forge Asbestos-Containing Product that was sold by Buffalo Forge or any other entity to any agency or entity of the United States Government and (2) to a Buffalo Forge Asbestos-Containing Product not sold by Buffalo Forge or any other entity to any agency or entity of the United States Government, then Contribution Percentages for Indemnity Costs for that claim shall be as provided in Section V.A.2.

G. Howden Buffalo shall cooperate and use reasonable efforts to provide or make available the information in its possession, custody or control to determine whether a claim is a Governmental Claim under the terms of this Agreement. Utica shall cooperate and use reasonable efforts to provide or make available (1) the information, if any, in its possession, custody or control not obtained from the Ampco-Pittsburgh Companies or any other Utica insured, and (2) to the extent that the Ampco-Pittsburgh Companies agree, the information it has obtained from the Ampco-Pittsburgh Companies, to determine whether a claim is a Governmental Claim under the terms of this Agreement

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H. Any dispute relating to a particular Asbestos-Related Bodily Injury Claim under this Section shall be resolved under the terms and conditions of Section XV.A. below.

**VI. REPRESENTATIONS AND WARRANTIES REGARDING POLICY SEARCHES**

A. The Parties represent and warrant to each other that (1) they have diligently searched their corporate files and records, including, without limitation, available historical corporate files and records where evidence of the existence of primary, umbrella, or excess general liability insurance coverage issued to or covering the Ampco-Pittsburgh Companies or Buffalo Forge would likely be found; and (2) that such searches have disclosed no evidence of any such policies issued by any Party Insurer, other than the Policies listed on Exhibit A, pre-1981 policies issued only to Ampco-Pittsburgh Corporation or to Aerofin Corporation, policies containing unambiguous absolute asbestos exclusions or product exclusions, or claims-made policies.

B. Howden Buffalo represents that it has not assigned any rights under the Policies and that it is aware of no other entity having rights as an insured under the Policies other than those entities defined as insureds or named insureds under the Policies.

**VII. RESERVATION OF RIGHTS/NON-WAIVER**

A. The Parties expressly reserve any rights and defenses that they may have against each other with respect to claims and policies not addressed herein, including without limitation any claims by employees or former employees of Howden Buffalo against Howden Buffalo that constitute workers' compensation or employer's liability claims under the terms and conditions of the Policies. The Parties further reserve any rights and defenses that they may have against any entities that are not Parties, including the right to assert the applicability of any policy interpretation, policy defense, or other defense that may be applicable against such entities. Without limiting the generality of the foregoing, the Parties agree that a Party Insurer's provision of coverage for Asbestos-Related Bodily Injury Claims pursuant to this Agreement shall not be alleged by Howden Buffalo as an acknowledgement by that Party Insurer, for any purpose other than this Agreement, as to the existence, terms and conditions of any actual or alleged Policy or Policies.

B. Without limiting the foregoing, the Parties expressly reserve their respective rights and defenses as to the following issues with respect to particular Asbestos-Related Bodily Injury Claims:

1. whether damages that are insurable under applicable law but not "compensatory" shall be payable as Indemnity Costs under any Policy and whether any Policy bars coverage for such damages;

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2. whether a late notice defense under any Policy applies to the particular claim; and
3. whether the particular claim falls outside the territorial coverage of any Policy.

Any disputes arising under this Section VII.B. shall not be subject to arbitration under Section XV.A. absent specific agreement of the affected Parties.

**VIII. RELEASE OF RIGHTS; DISMISSAL OF LITIGATION**

A. Effective upon the payment of the amounts specified in Section II.B., each Party, on behalf of itself and (to the fullest extent of its authority) of its respective past, present and future employees, officers, directors, principals, parents, subsidiaries, affiliates, associated corporations, agents, representatives, predecessors, successors and assigns, as to each other, expressly agrees to waive, release, acquit and forever discharge all claims, suits and demands (other than those expressly preserved in or governed by this Agreement) under the Policies in connection with Asbestos-Related Bodily Injury Claims, including any bad faith, extracontractual liability or punitive damages claim, known or unknown, whether arising by contract, regulation, statute, common law, or otherwise; *provided, however*, that nothing in the foregoing release shall be construed to deprive the Parties of any rights or remedies for any violation of obligations under this Agreement.

B. Except as expressly provided otherwise in this Agreement, (1) each Party, on behalf of itself and (to the fullest extent of its authority) of its respective past, present and future employees, officers, directors, principals, parents, subsidiaries, affiliates, associated corporations, agents, representatives, predecessors, successors and assigns, further agrees that all payments made pursuant to the terms of this Agreement shall be final, and (2) the Parties and their respective past, present and future employees, officers, directors, principals, parents, subsidiaries, affiliates, associated corporations, agents, representatives, predecessors, successors and assigns will not seek to recover from each other any payments made pursuant to the terms of this Agreement and expressly agree to waive, release, acquit and forever discharge all claims, suits and demands, known or unknown, whether arising by contract, regulation, statute, common law or otherwise, in connection with such payments.

C. 1. It is expressly understood and agreed that for purposes of this Agreement, none of the Howden Entities is liable or otherwise obligated in any respect for claims arising out of:

- a. pumps manufactured, distributed, handled, installed, repaired, maintained or sold by Buffalo Pumps, Inc.; or
- b. heat exchange coils manufactured, distributed, handled, installed, repaired, maintained or sold by Aerofin

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Corporation or its predecessor, Aerofin Corporation, a New Jersey corporation.

All such claims shall be handled in accordance with Section II.D. of the Ampco Cross-Acknowledgements Agreement.

2. The Parties shall promptly attempt to resolve by agreement among themselves and (if necessary) with the Ampco-Pittsburgh Companies whether and on what terms the following products should be deemed to be Buffalo Forge Asbestos-Containing Products: machine tool products allegedly manufactured, distributed, handled, installed, repaired, maintained or sold by Buffalo Forge or Buffalo Forge's alleged former subsidiary the George L. Squier Manufacturing Company. If the Parties have not resolved such issues within five (5) months after the Effective Date, then any Party may ask the Court in the action titled *Howden Buffalo Inc. v. Ampco-Pittsburgh Corp., et al.*, Civil Action No. 03-1809 (W.D. Pa.) to restore the action to its active docket solely for the purpose of resolving issues not resolved in this Agreement or ask the Court in the action titled *Utica Mutual Insurance Co. v. Buffalo Pumps, Inc., et al.*, Civil Action No. 2003-000331 (Supreme Court, Oneida County, N.Y.) to determine such issues.

3. The Parties shall determine whether and on what terms products other than those specified in Sections VIII.C.1. and C.2. should be deemed to be Buffalo Forge Asbestos-Containing Products in accordance with the procedures set forth in Section II.F. of the Ampco Cross-Acknowledgements Agreement, absent agreement otherwise by the affected Parties.

D. Within 10 business days after the last signature on this Agreement, the Parties shall file a stipulated motion to place on the Court's inactive docket all claims, including counter-claims, cross-claims and third-party claims, asserted by or between any of the Parties and any of the Howden Entities in the action titled *Howden Buffalo Inc. v. Ampco-Pittsburgh Corp., et al.*, Civil Action No. 03-1809 (W.D. Pa.). Within 10 business days after any final settlement of all remaining disputes not resolved in this Agreement, the Parties shall file a stipulated motion to dismiss, with prejudice and without costs to any Party, all claims, including counter-claims, cross-claims and third-party claims, asserted by or between any of the Parties and any of the Howden Entities in such action.

E. Within 10 business days after the last signature on this Agreement, Utica shall file a Praecipe withdrawing its Motion for Leave to File a First Amended Complaint, filed January 23, 2004, in the action titled *Utica Mutual Insurance Co. v. Buffalo Pumps, Inc., et al.*, Civil Action No. 2003-000331 (Supreme Court, Oneida County, N.Y.).

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**IX. AGREEMENT NOT A VIOLATION OF ANY DUTY**

The negotiation, execution and performance of this Agreement shall not be deemed to be or cited as an act of bad faith or as a violation of any statute or any duty owed by any of the Parties.

**X. INTERPRETATION**

A. This Agreement is not a contract of insurance. Special rules applicable to interpretation or construction of insurance contracts shall not apply; instead only those rules applicable to interpretation or construction of contracts in general shall apply. This Agreement is the product of arm's length settlement negotiations between and among the Parties to compromise disputed insurance coverage issues in connection with Asbestos-Related Bodily Injury Claims, and no Party shall be deemed to be the drafter of any provisions or of the entire Agreement, nor shall any part of this Agreement be construed against any Party on the basis of that Party's identity as an insurance company or as the drafter of any part of this Agreement. Each of the Parties hereto has participated in the drafting of this Agreement after consulting with counsel. Section headings contained herein are for the purpose of organization only and shall not constitute a part of this Agreement.

B. This Agreement does not replace the terms, conditions or exclusions of the Policies, except with respect to issues expressly addressed herein. To the extent that the terms, conditions or exclusions of the Policies conflict with the terms of this Agreement, the latter terms shall govern.

**XI. ENTIRE AGREEMENT/AMENDMENTS TO AGREEMENT**

A. This Agreement may not be modified, changed, contradicted, added to, or altered in any way by any previous written or oral agreements or by any subsequent oral agreements.

B. No amendments or variations of the terms of this Agreement shall be valid unless made in writing and signed by all Parties affected thereby. Amendments or variations that are in writing and signed by fewer than all Parties hereto shall be valid and binding as between those Parties, but invalid to the extent the rights of any other Parties who did not sign would be affected adversely.

C. Nothing in this Agreement shall prohibit the Parties from adding additional policies to this Agreement. If any of the Parties finds any evidence of any general liability insurance policy not listed in Exhibit A that may provide coverage for any Asbestos-Related Bodily Injury Claims, the Party finding such evidence shall bring it to the attention of the other Parties. The Parties agree, however, that a policy issued by a Party Insurer shall be added to the Agreement only if they discover an actual copy of a general liability policy insuring Buffalo Forge at any time or the Ampco-Pittsburgh Companies between and including July 1981 and May 1993, or a declarations page,

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE**

certificate of insurance, "daily," binder or placing slip from which the material terms and conditions including limits of such a policy may be determined. If any Party does find an actual copy of a general liability policy (or a declarations page or other secondary evidence from which the material terms and limits may be determined) insuring Buffalo Forge at any time or the Ampco-Pittsburgh Companies between and including July 1981 and May 1993, then the Parties shall confer in good faith regarding the manner in which such policy may participate in the funding of Defense and Indemnity Costs.

**XII. CONFIDENTIALITY AGREEMENT**

The terms of this Agreement and its implementation are confidential and may not be disclosed to any other party, except to the Ampco-Pittsburgh Companies, alleged primary and excess insurers of the Ampco-Pittsburgh Companies or Howden Buffalo, reinsurers, retrocessionaires, auditors, counsel, accountants, consultants, officers, directors, employees, corporate parents or other affiliates, lenders and underwriters of the Parties; and, if required by law or regulation, to government agencies; and, if required by the rules of any recognized stock exchange, to such stock exchange; and by Order of a Court having jurisdiction, or as otherwise required by law; and otherwise by written consent of all affected Parties, not to be unreasonably withheld. Notwithstanding the foregoing, the fact and existence of this Agreement shall not be deemed confidential.

**XIII. NO WAIVER OF BREACH**

No waiver of any breach of any provisions of this Agreement shall be deemed a waiver of any other breach of the same or any other provisions. No action designed to minimize or prevent liability to Parties shall be deemed a waiver of any breach of this Agreement.

**XIV. SUCCESSORS TO BE BOUND**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

**XV. RESOLUTION OF DISPUTES**

A. Any controversy or claim that arises out of the application of this Agreement to a particular Asbestos-Related Bodily Injury Claim or that is expressly designated in this Agreement for resolution under this Section XV.A. shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules before a single arbitrator, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In addition to any award, the arbitrator shall award the prevailing party(ies) costs and attorneys' fees.

B. All proceedings under Section XV.A., and all files and records relating thereto, shall be treated by the Parties as confidential in accordance with Section XII.

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE**

C. With respect to any controversy or claim not confined to a particular Asbestos-Related Bodily Injury Claim or not expressly designated in this Agreement for resolution under Section XV.A., the affected Parties may nonetheless agree to proceed under Section XV.A., or they may pursue other available legal proceedings or remedies.

**XVI. NO ASSIGNMENT**

None of the Parties shall assign this Agreement without first obtaining the written consent of the other Parties affected by the assignment; provided, however, that this provision shall not prohibit any assignment by a Party made by merger, consolidation or operation of law or to a person or entity that succeeds to all or substantially all of such Party's rights.

**XVII. NO RIGHTS IN THIRD PARTIES**

This Agreement does not and shall not be interpreted to create any rights or obligations in any person or entity not a Party to this Agreement.

**XVIII. NOTICES**

Any notices, billing, payment, or other communications given under this Agreement shall be sufficient if sent to the following addresses, unless otherwise directed in writing:

**Howden Buffalo**

President  
Howden Buffalo Inc.  
2029 West DeKalb Street  
Camden, SC 29020

cc: Mr. Richard T. O'Connell  
Charterbrook Associates  
10 Dogwood Lane  
Ellington, CT 06029

John G. Buchanan, Esq.  
Covington & Burling  
1201 Pennsylvania Ave., NW  
Washington, D.C. 20004-2401



**CONFIDENTIAL SETTLEMENT COMMUNICATION – WITHOUT PREJUDICE**

Utica Mutual Insurance Company

Regina DePumpo, Esq.  
Senior Staff Attorney  
Utica Mutual Insurance Company  
P.O. Box 6568  
Utica, NY 13504

cc: Lon A. Berk, Esq.  
Hunton & Williams  
1751 Pinnacle Drive  
McLean, VA 22102

XL Insurance Company, Ltd.

Paul Fox  
Casualty Claim Manager  
XL Insurance Company  
70 Gracechurch Street  
London, England EC3V 0XL

cc: N. D. Williams, Esq.  
Kennedys International Law Firm  
10 Lloyds Avenue  
London, England EC3N 3AX

cc: Robert E. Dapper, Jr., Esq.  
Dapper, Baldasare, Benson, Behling & Kane, P.C.  
Four Gateway Center, 10th Floor  
444 Liberty Avenue  
Pittsburgh, PA 15222

Argonaut Insurance Company  
Argonaut Midwest Insurance Company  
Argonaut Southwest Insurance Company

Mr. David Boyer  
Argonaut Insurance Company  
8750 W. Bryn Mawr  
Suite 1300  
Chicago, IL 60631-3508

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE**

cc: Thomas M. Crawford, Esq.  
LITCHFIELD CAVO LLP  
303 W. Madison Street  
Suite 300  
Chicago, IL 60606  
312-781-6617  
312-781-6630 (fax)

Hartford Accident and Indemnity Company

Jesse D. Russell  
The Hartford  
Complex Claim Group  
690 Asylum Avenue, T-7-92  
Hartford, Connecticut 06115

cc: H. Christopher Bartolomucci, Esq.  
Hogan & Hartson, LLP  
555 Thirteenth Street, NW  
Washington, DC 20004

Pacific Employers Insurance Company

Thomas Garrity  
Resolute Management, Inc.  
Mid-Atlantic Division  
30 South 17th Street, Suite 700  
Philadelphia, PA 19103

cc: Lawrence A. Nathanson, Esq.  
Siegal, Napierkowski & Park  
533 Fellowship Road  
Suite 120  
Mt. Laurel, NJ 08054

Liberty Mutual Insurance Company

Lincoln T. Davis  
Liberty Mutual Insurance Company  
100 Liberty Way  
P.O. Box 1525  
Dover, NH 03820-1525

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE**

cc: John C. Sullivan, Esq.  
Post & Schell, P.C.  
Four Penn Center  
1600 John F. Kennedy Boulevard,  
Philadelphia, PA 19103

**XIX. LEGISLATIVE REFORM**

If federal legislation implementing asbestos bodily-injury claim reform is enacted in any form, the Parties agree to confer in good faith to address what, if any, amendments or modifications to this Agreement may be proper.

**XX. EXECUTION AND COUNTERPARTS**

This Agreement may be executed in counterparts; each of which when so executed shall be deemed to be an original, and all of such counterparts shall together constitute but one and the same Agreement. Each Party hereto warrants that the individual signing this Agreement on behalf of such Party is duly authorized and empowered to enter into this Agreement.

**XXI. APPLICABILITY**

This Agreement shall apply to all Defense Costs and Indemnity Costs Incurred on and after May 20, 2005.

**XXII. HARTFORD'S LIMITED WITHDRAWAL OPTION**

A. Hartford shall have the right to withdraw from this Agreement upon 90 days' written notice. Such withdrawal will be effective on the 91st day after notice is sent to the other Parties by certified mail or any other form of delivery requiring the recipient's acknowledgement of receipt; provided, however, that no such withdrawal shall be effective until one year after the Effective Date.

B. In the event of such withdrawal, no Party shall seek reimbursement of any payments made by or to Hartford pursuant to this Agreement, which payments shall be final; *provided, however*, that the Parties reserve all their rights with respect to the effect of any self-insurance provisions in the Hartford Policies.

C. Except as otherwise provided in Section XXII.B., upon such withdrawal, the rights and obligations of Hartford with respect to the other Parties, and vice versa, will exist as though this Agreement had never been entered into, and Hartford and the other Parties may thereafter assert any and all rights or defenses, applicable in law or in equity, that they would have had under the Policies in the absence of this Agreement. All potentially applicable statutes of limitation or other time restraints on litigation with respect to claims against Hartford shall be tolled from the Effective Date until the ninety-first day after notice of withdrawal is sent pursuant to Section XXII.A., so that the period

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE**

from the Effective Date until such ninety-first day shall not be counted in computing any such statutes of limitation or other time restraints with respect to claims against Hartford.

D. Hartford's Contribution Percentage for all Defense Costs and Indemnity Costs Incurred on or after the effective date of Hartford's withdrawal shall be Howden Buffalo's responsibility, subject to all of Howden Buffalo's rights, remedies and claims against Hartford pursuant to Section XXII.C. In no circumstance (including the bankruptcy of Howden Buffalo) shall any remaining Party Insurer be responsible in any way for any portion of Hartford's Contribution Percentages for Defense Costs or Indemnity Costs under this Agreement or under any Hartford Policy listed in Exhibit A to this Agreement.

**XXIII. LIMITATION OF OBLIGATIONS**

Within 10 business days after the last signature on this Agreement, in addition to the motion provided in Section VIII.D., the Parties shall file a stipulated motion with the Court in the action titled *Howden Buffalo Inc. v. Ampco-Pittsburgh Corp., et al.*, Civil Action No. 03-1809 (W.D. Pa.), requesting an order providing that no Party shall be obligated to pay any amount for Asbestos-Related Bodily Injury Claims within the scope of the Agreement in excess of the amounts for which it is responsible under the terms of this Agreement. The request for such an order is a material part of this Agreement.

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE**

IN WITNESS WHEREOF, this Agreement has been read and signed in duplicate originals by the duly authorized representatives of the Parties as of the dates set forth below.

UTICA MUTUAL INSURANCE  
COMPANY

By: Regina A. DeLunpo  
Date: 9-20-05

XL INSURANCE COMPANY, LTD.

By: \_\_\_\_\_  
Date: \_\_\_\_\_

HARTFORD ACCIDENT AND  
INDEMNITY COMPANY

By: \_\_\_\_\_  
Date: \_\_\_\_\_

LIBERTY MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_  
Date: \_\_\_\_\_

HOWDEN BUFFALO INC.

By: [Signature]  
Date: 9-9-05

ARGONAUT INSURANCE COMPANY,  
ARGONAUT MIDWEST INSURANCE  
COMPANY and ARGONAUT  
SOUTHWEST INSURANCE COMPANY

By: \_\_\_\_\_  
Date: \_\_\_\_\_

PACIFIC EMPLOYERS INSURANCE  
COMPANY

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONFIDENTIAL SETTLEMENT COMMUNICATION – WITHOUT PREJUDICE**

IN WITNESS WHEREOF, this Agreement has been read and signed in duplicate originals by the duly authorized representatives of the Parties as of the dates set forth below.

UTICA MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

XL INSURANCE COMPANY, LTD.

By: *Theresa Wade*

Date: 29/9/05

HOWDEN BUFFALO INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

ARGONAUT INSURANCE COMPANY,  
ARGONAUT MIDWEST INSURANCE  
COMPANY and ARGONAUT  
SOUTHWEST INSURANCE COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

HARTFORD ACCIDENT AND  
INDEMNITY COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

PACIFIC EMPLOYERS INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

LIBERTY MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE**

IN WITNESS WHEREOF, this Agreement has been read and signed in duplicate originals by the duly authorized representatives of the Parties as of the dates set forth below.

UTICA MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

XL INSURANCE COMPANY, LTD.

By: \_\_\_\_\_

Date: \_\_\_\_\_

HOWDEN BUFFALO INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

ARGONAUT INSURANCE COMPANY,  
ARGONAUT MIDWEST INSURANCE  
COMPANY and ARGONAUT  
SOUTHWEST INSURANCE COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

HARTFORD ACCIDENT AND  
INDEMNITY COMPANY

By: M. Mulich - AVP

Date: 9/27/05

PACIFIC EMPLOYERS INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

LIBERTY MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

**CONFIDENTIAL SETTLEMENT COMMUNICATION – WITHOUT PREJUDICE**

IN WITNESS WHEREOF, this Agreement has been read and signed in duplicate originals by the duly authorized representatives of the Parties as of the dates set forth below.

UTICA MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

XL INSURANCE COMPANY, LTD.

By: \_\_\_\_\_

Date: \_\_\_\_\_

HOWDEN BUFFALO INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

ARGONAUT INSURANCE COMPANY,  
ARGONAUT MIDWEST INSURANCE  
COMPANY and ARGONAUT  
SOUTHWEST INSURANCE COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

HARTFORD ACCIDENT AND  
INDEMNITY COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

PACIFIC EMPLOYERS INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

LIBERTY MUTUAL INSURANCE  
COMPANY

By:   
FREDDY R. WIEDMANN, ASBESTOS MGR

Date: 9/20/05



**CONFIDENTIAL SETTLEMENT COMMUNICATION – WITHOUT PREJUDICE**

IN WITNESS WHEREOF, this Agreement has been read and signed in duplicate originals by the duly authorized representatives of the Parties as of the dates set forth below.

UTICA MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

XL INSURANCE COMPANY, LTD.

By: \_\_\_\_\_

Date: \_\_\_\_\_

HARTFORD ACCIDENT AND  
INDEMNITY COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

LIBERTY MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

HOWDEN BUFFALO INC.

By: 

Date: 9-9-05

ARGONAUT INSURANCE COMPANY,  
ARGONAUT MIDWEST INSURANCE  
COMPANY and ARGONAUT  
SOUTHWEST INSURANCE COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

PACIFIC EMPLOYERS INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE**

IN WITNESS WHEREOF, this Agreement has been read and signed in duplicate originals by the duly authorized representatives of the Parties as of the dates set forth below.

UTICA MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

XL INSURANCE COMPANY, LTD.

By: \_\_\_\_\_

Date: \_\_\_\_\_

HOWDEN BUFFALO INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

ARGONAUT INSURANCE COMPANY,  
ARGONAUT MIDWEST INSURANCE  
COMPANY and ARGONAUT  
SOUTHWEST INSURANCE COMPANY

By: \_\_\_\_\_

Date: 9/16/05

HARTFORD ACCIDENT AND  
INDEMNITY COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

PACIFIC EMPLOYERS INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

LIBERTY MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

**CONFIDENTIAL SETTLEMENT COMMUNICATION – WITHOUT PREJUDICE**

IN WITNESS WHEREOF, this Agreement has been read and signed in duplicate originals by the duly authorized representatives of the Parties as of the dates set forth below.

UTICA MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

XL INSURANCE COMPANY, LTD.

By: \_\_\_\_\_

Date: \_\_\_\_\_

HARTFORD ACCIDENT AND  
INDEMNITY COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

LIBERTY MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

HOWDEN BUFFALO INC.

By: [Signature]

Date: 9-9-05

ARGONAUT INSURANCE COMPANY,  
ARGONAUT MIDWEST INSURANCE  
COMPANY and ARGONAUT  
SOUTHWEST INSURANCE COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

PACIFIC EMPLOYERS INSURANCE  
COMPANY

By: [Signature]

Date: 9.14.2005

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE****EXHIBIT A: TABLE I****PRIMARY POLICIES**

Start Date	End Date	Carrier	Policy Number	Limits of Liability	Wasting/Non-Wasting
6/1/61	6/1/62	Utica Mutual Insurance Company	Unknown	\$1,000,000	Non-Wasting
6/1/62	6/1/63	Utica Mutual Insurance Company	40131 CL	\$1,000,000	Non-Wasting
6/1/63	6/1/64	Utica Mutual Insurance Company	58111 LC	\$1,000,000	Non-Wasting
6/1/64	6/1/65	Utica Mutual Insurance Company	60431 LC	\$1,000,000	Non-Wasting
6/1/65	6/1/66	Utica Mutual Insurance Company	63483 LC	\$1,000,000	Non-Wasting
6/1/66	6/1/67	Utica Mutual Insurance Company	66539 LC	\$1,000,000	Non-Wasting
6/1/67	6/1/68	Utica Mutual Insurance Company	LC 70771	\$1,000,000	Non-Wasting
6/1/68	6/1/69	Utica Mutual Insurance Company	75333 LC	\$1,000,000	Non-Wasting
6/1/69	6/1/70	Utica Mutual Insurance Company	81646 LC	\$1,000,000	Non-Wasting
6/1/70	6/1/71	Utica Mutual Insurance Company	92549 LC	\$1,000,000	Non-Wasting
6/1/71	6/1/72	Utica Mutual Insurance Company	LC 103561	\$1,000,000	Non-Wasting
6/1/72	6/1/73	Utica Mutual Insurance Company	LC 103561	\$1,000,000	Non-Wasting
6/1/73	6/1/74	Utica Mutual Insurance Company	GLA 3928	\$1,000,000	Non-Wasting
6/1/74	6/1/75	Utica Mutual Insurance Company	GLA 3928	\$1,000,000	Non-Wasting
6/1/75	6/1/76	Utica Mutual Insurance Company	GLA 3928	\$1,000,000	Non-Wasting
6/1/76	6/1/77	Utica Mutual Insurance Company	GLA 3928	\$1,000,000	Non-Wasting
6/1/77	6/1/78	Utica Mutual Insurance Company	GLA 3928	\$1,000,000	Non-Wasting
6/1/78	6/1/79	Utica Mutual Insurance Company	GLA 3928	\$1,000,000	Non-Wasting
6/1/79	6/1/80	Utica Mutual Insurance Company	GLA 3928	\$1,000,000	Non-Wasting
6/1/80	6/1/81	[Utica Mutual Insurance Company] <sup>1</sup>	GLA 3928	\$1,000,000	Non-Wasting

<sup>1</sup> This policy is Exhausted and therefore is not deemed to be a Policy required to participate under this Agreement.

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE**

Start Date	End Date	Carrier	Policy Number	Limits of Liability	Wasting/Non-Wasting
6/1/81	1/1/82	Argonaut Insurance Companies	CL87-395-000047	\$1,000,000	Non-Wasting
1/1/82	1/1/83	Argonaut Insurance Companies	CL87-402-000013	\$1,000,000 per occurrence (no bodily injury aggregate)	Non-Wasting
1/1/83	1/1/84	Argonaut Insurance Companies	AOCL87-414-000013	\$1,000,000 per occurrence (no bodily injury aggregate)	Non-Wasting
1/1/84	1/1/85	Hartford Accident and Indemnity Company	40 JPR P30706E	\$1,000,000 per occurrence (\$2,000,000 aggregate)	Non-Wasting
1/1/85	1/1/86	Hartford Accident and Indemnity Company	40 JPR P30712E	\$1,000,000 per occurrence (\$2,000,000 aggregate)	Non-Wasting
1/1/86	9/1/86	Liberty Mutual Insurance Company	RG1-681-004076-076	\$2,000,000 per occurrence (\$3,000,000 aggregate)	Non-Wasting

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE****EXHIBIT A: TABLE II****UMBRELLA POLICIES**

<b>Start Date</b>	<b>End Date</b>	<b>Carrier</b>	<b>Policy Number</b>	<b>Limits of Liability</b>	<b>Wasting/Non-Wasting</b>
1/6/65	1/6/66	Utica Mutual Insurance Company	1074 GLU	\$1,000,000	Wasting
1/6/66	1/6/67	Utica Mutual Insurance Company	1212 GLU	\$1,000,000	Wasting
1/6/67	1/6/68	Utica Mutual Insurance Company	1362 GLU	\$1,000,000	Wasting
1/6/68	1/6/69	Utica Mutual Insurance Company	1577 GLU	\$1,000,000	Wasting
1/6/69	1/6/70	Utica Mutual Insurance Company	1807 ALU	\$1,000,000	Wasting
1/1/70	1/1/71	Utica Mutual Insurance Company	1981 ALU	\$1,000,000	Wasting
1/1/71	1/1/72	Utica Mutual Insurance Company	2165 ALU	\$1,000,000	Wasting
1/1/72	1/1/73	Utica Mutual Insurance Company	2403 ALU	\$1,000,000	Wasting
1/1/73	1/1/74	Utica Mutual Insurance Company	2403 ALU	\$4,000,000	Wasting
1/1/74	1/1/75	Utica Mutual Insurance Company	2403 ALU	\$4,000,000	Wasting
1/1/75	1/1/76	Utica Mutual Insurance Company	2403 ALU	\$4,000,000	Wasting
2/9/76	1/1/77	Utica Mutual Insurance Company	LU 2403	\$1,000,000	Non-Wasting
1/1/77	1/1/78	Utica Mutual Insurance Company	LU 2403	\$2,000,000	Non-Wasting
1/1/78	6/1/78	Utica Mutual Insurance Company	LU 2403	\$2,000,000	Non-Wasting

## CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE

Start Date	End Date	Carrier	Policy Number	Limits of Liability	Wasting/Non-Wasting
6/1/78	6/1/79	Utica Mutual Insurance Company	LU 5423	\$2,000,000	Non-Wasting
6/1/79	6/1/80	Utica Mutual Insurance Company	LU 5423	\$9,000,000	Non-Wasting
6/1/80	6/1/81	Pacific Employers Insurance Company	XMO003649	\$9,000,000	Non-Wasting
5/1/95	4/30/96	[Winterthur International Insurance Co. Ltd.] <sup>2</sup>	532/MH53052595	100% of 33.33% <sup>3</sup> of \$200,000 xs SIR (£1 = \$2) <sup>4</sup>	Wasting
5/1/95	4/30/96	Winterthur International Insurance Co. Ltd.	532/MH53053995	100% of 75% of \$1,800,000 xs \$200,000 xs SIR (£1 = \$2)	Wasting
5/1/95	4/30/96	Winterthur International Insurance Co. Ltd.	532/MH55055695	50% of 100% of \$8,000,000 xs \$2,000,000 xs SIR (£1 = \$2)	Wasting
5/1/96	4/30/97	[Winterthur International Insurance Co. Ltd.] <sup>5</sup>	532/MH53052596	100% of 33.33% of \$200,000 xs SIR (£1 = \$2)	Wasting
5/1/96	4/30/97	Winterthur International Insurance Co. Ltd.	532/MH53053996	100% of 75% of \$1,800,000 xs \$200,000 xs SIR (£1 = \$2)	Wasting
5/1/96	4/30/97	Winterthur International Insurance Co. Ltd.	532/MH55055696	50% of 100% of \$8,000,000 xs \$2,000,000 xs SIR (£1 = \$2)	Wasting
5/1/97	11/30/97	[Winterthur International Insurance Co. Ltd.] <sup>6</sup>	532/MH53052597	100% of 33.33% of \$200,000 xs SIR (£1 = \$2)	Wasting
5/1/97	11/30/97	Winterthur International Insurance Co. Ltd.	532/MH53053997	66.67% of 75% of \$1,800,000 xs \$200,000 xs SIR (£1	Wasting

<sup>2</sup> This policy is Exhausted and therefore is not deemed to be a Policy required to participate under this Agreement.

<sup>3</sup> The first percentage quantifies Winterthur's participation in the policy; the second percentage quantifies the participation of the policy in the layer of coverage. For example, in the policy noted above, Winterthur wrote 100% of a policy covering a 33.33% quota share of the \$200,000 layer of coverage.

<sup>4</sup> The Winterthur policies state their limits in pounds Sterling but provide contractual pound for dollar exchange rates for calculating limits in dollars. Limits are stated in dollars, with the applicable contractual rate noted.

<sup>5</sup> This policy is Exhausted and therefore is not deemed to be a Policy required to participate under this Agreement.

<sup>6</sup> This policy is Exhausted and therefore is not deemed to be a Policy required to participate under this Agreement.

## CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE

Start Date	End Date	Carrier	Policy Number	Limits of Liability	Wasting/Non-Wasting
				= \$2)	
5/1/97	11/30/97	Winterthur International Insurance Co. Ltd.	532/MH55055697	50% of 100% of \$8,000,000 xs \$2,000,000 xs SIR (£1 = \$2)	Wasting
12/1/97	5/31/99	Winterthur International Insurance Co. Ltd.	901/LH9712519	100% of 70% of \$2,000,000 xs SIR (£1 = \$2)	Wasting
12/1/97	7/21/98	Winterthur International Insurance Co. Ltd.	901/LH9712521	22.728% of 100% of \$28,000,000 xs \$2,000,000 xs SIR (£1 = \$2)	Wasting
7/22/98	5/31/99	Winterthur International Insurance Co. Ltd.	901/LH9813535	30% of 100% of \$18,000,000 xs \$2,000,000 xs SIR (£1 = \$2)	Wasting
7/22/98	5/31/99	Winterthur International Insurance Co. Ltd.	901/LH9813364	4.938% of 100% of \$80,000,000 xs \$20,000,000 xs SIR (£1 = \$2)	Wasting
6/1/99	5/31/00	[Winterthur International Insurance Co. Ltd.] <sup>7</sup>	901/LK9905224(A)	100% of 60% of \$1,600,000 xs SIR (£1 = \$1.60)	Wasting
6/1/99	5/31/00	Winterthur International Insurance Co. Ltd.	901/LK9905224(B)	100% of 100% of \$6,400,000 xs \$1,600,000 xs SIR (£1 = \$1.60)	Wasting
6/1/00	5/31/01	Winterthur International Insurance Co. Ltd.	901/LK0005588(A)	100% of 60% of \$1,600,000 xs SIR (£1 = \$1.60)	Wasting
6/1/00	5/31/01	Winterthur International Insurance Co. Ltd.	901/LK0005588(B)	100% of 100% of \$6,400,000 xs \$1,600,000 xs SIR (£1 = \$1.60)	Wasting
6/1/01	6/30/02	Winterthur International Insurance Co. Ltd.	901/LK0106032(A)	100% of 60% of \$1,600,000 xs SIR (£1 = \$1.60)	Wasting
6/1/01	6/30/02	Winterthur International Insurance Co. Ltd.	901/LK0106032(B)	100% of 100% of \$6,400,000 xs \$1,600,000 xs SIR (£1 = \$1.60)	Wasting

<sup>7</sup> This policy is Exhausted and therefore is not deemed to be a Policy required to participate under this Agreement.



**CONFIDENTIAL SETTLEMENT COMMUNICATION – WITHOUT PREJUDICE**

**EXHIBIT B: Schedule I**

**EXAMPLES OF CLAIMS OR SUITS INITIALLY  
ASSIGNED TO WINTERTHUR FOR DEFENSE,  
PURSUANT TO SECTION IV.K.1.**

*These are only examples and do not alter or affect the Agreement in any way.*

- Howden Buffalo as successor to American Davidson
- Howden Buffalo as successor to BF Sturtevant
- Howden Buffalo as successor to Joy Manufacturing
- Howden Buffalo individually and as successor to American Davidson
- Howden Buffalo individually and as successor to BF Sturtevant
- Howden Buffalo individually and as successor to Joy Manufacturing
- Any Howden entity besides Howden Buffalo or Howden Fan Company, individually
- Any Howden entity besides Howden Buffalo or Howden Fan Company, as successor to American Davidson
- Any Howden entity besides Howden Buffalo or Howden Fan Company, as successor to BF Sturtevant
- Any Howden entity besides Howden Buffalo or Howden Fan Company, as successor to Joy Manufacturing

**CONFIDENTIAL SETTLEMENT COMMUNICATION – WITHOUT PREJUDICE**

**EXHIBIT B: Schedule II**

**EXAMPLES OF CLAIMS INITIALLY ASSIGNED  
TO LEAD CARRIER FOR DEFENSE,  
PURSUANT TO SECTION IV.K.2**

*These are only examples and do not alter or affect the Agreement in any way.*

- Howden Buffalo individually
- Howden Buffalo as successor to Buffalo Forge
- Howden Buffalo individually and as successor to Buffalo Forge
- Howden Buffalo individually, as successor to Buffalo Forge, and as successor to American Davidson
- Howden Buffalo individually, as successor to Buffalo Forge, and as successor to BF Sturtevant
- Howden Buffalo individually, as successor to Buffalo Forge, and as successor to Joy Manufacturing
- Howden Buffalo individually, as successor to Buffalo Forge, and as successor to any other entity
- Howden Fan Company, individually
- Howden Fan Company as successor to Buffalo Forge
- Howden Fan Company individually and as successor to Buffalo Forge
- Howden Fan Company individually, as successor to Buffalo Forge, and as successor to any other entity
- Any Howden entity as successor to Buffalo Forge

**CONFIDENTIAL SETTLEMENT COMMUNICATION – WITHOUT PREJUDICE**

**EXHIBIT C:**

***UTICA LITIGATION GUIDELINES***

SCRIPPS

## **UTICA NATIONAL INSURANCE GROUP Insurance Defense Guidelines**

### **EFFECTIVE DATE**

These Utica National Insurance Group Insurance Defense Guidelines are effective June 1, 2005 and will be applied to time entries dated and expenses incurred on or after that date. Further, the provisions of Utica National's pre-existing Insurance Defense Guidelines, together with commonly accepted principles will be applied to all entries regardless of date.

### **COMPANY OBJECTIVE**

Utica National expects to work with counsel and the insured to achieve the best result for the Insured in an efficient and cost-conscious manner consistent with counsel's ethical obligations. Nothing contained herein is intended to restrict counsel's independent exercise of professional judgment in rendering legal services for the Insured.

### **CONFIDENTIALITY**

During the representation, counsel may deal with confidential Company information. This information may relate to a specific client of Utica National, Utica National in general, or Utica National's internal strategy on important legal and business issues. This information is very sensitive, and must be held confidential and privileged even after counsel ceases to represent Utica National's insured.

All Utica National documents or other materials entrusted to counsel must be maintained in confidence by counsel, and returned to Utica National at the conclusion of the matter. Counsel may destroy company documents only with advance written authorization from the Claims Representative.

Client/legal representative confidentiality statutes may apply to specific jurisdictions and should be adhered to accordingly.

### **CONFLICTS OF INTEREST**

Before counsel accepts an assignment from Utica National, the Claims Department must be notified promptly in writing of any conflicts of interest that might arise in connection with counsel's current or proposed representation of other parties in other matters.

### **MEDIA RELATIONS**

Counsel must not comment, on or off the record, with respect to any matter in which it represents Utica National. All media contact must be cleared with Utica National.

### **COMMUNICATION WITH UTICA NATIONAL**

Upon receipt of a new case, counsel shall send an acknowledgment letter regarding receipt of the assignment and designating the legal team assigned to the case. Any matters of immediate concern or information that may result in early resolution of the case should be addressed in the acknowledgment letter.

Utica National will designate a Claims Representative responsible for each assignment. This Claim Representative will be responsible for the matter. The Claim Representative shall be advised of all significant developments and consulted regarding all important decisions concerning the representation.

The Claim Representative will define Utica National's objectives, monitor progress of legal matters and keep you informed of important developments. We encourage you to ask about the Claims Department's responsibilities, organization or standards to help your firm understand our operations and objectives.

All communications with Utica National should be through the Claim Representative, who will facilitate access to business executives, managers, employees, and company records, as appropriate. Occasionally, the manager, supervisor, litigation specialist or Home Office Claims Staff may initiate direct contact.

## **REPORTING REQUIREMENTS**

### **A. Initial Suit Report**

Counsel shall complete and forward to Utica National an initial suit report within 45 days of receipt of a new assignment. The initial suit report should address your opinion on liability and value.

In the event of a disagreement relating to the litigation activities outlined in the initial suit report, the final decision will remain with the independent professional judgment of defense counsel.

### **B. Significant Development Reporting**

Routine reporting is discouraged. However, counsel shall communicate and apprise Utica National of all significant developments as soon as practicable. A significant development includes but is not limited to settlement options, dispositive motions, reassessments of liability and/or damages and adverse decisions or judgments. In the event of an adverse decision or judgment, firm shall ensure that the right to appeal is preserved. Should an appeal be taken, the firm shall consult with Utica National and present the relevant issues and strategy.

Expert and medical reports should not be routinely summarized. We prefer counsel to comment on the positive and negative aspects and how these aspects impact case evaluation.

### **C. Documentation**

Counsel should provide copies of all pleadings and amended pleadings filed by or against the insured client, expert and medical reports, research memoranda, motion papers and legal briefs, discovery requests and responses and releases and orders of dismissal or final judgments.

Counsel should comply with all reasonable requests for information and documents, provided however, any documents or information that are privileged or intended by the insured to be privileged, shall not be disclosed, absent consent from the insured.

## **NEGOTIATION AND SETTLEMENT**

An effective and strategically sound legal defense is the responsibility of counsel and Utica National and should be developed in a timely manner. It is the goal of Utica National to identify, timely, those claims for which there is liability, and to discuss

settlement opportunities early. Where appropriate, alternative dispute resolutions are encouraged. The activities necessary to defend a given claim and bring it to appropriate resolution should be addressed early and the steps necessary to achieve that resolution should be jointly agreed upon as between Utica National and defense counsel.

All settlement communications and/or opportunities shall be immediately conveyed by counsel to the Claims Representative assigned to the case. All formal and informal settlement discussions shall include the Claims Representative, unless counsel is otherwise informed. If counsel is involved in settlement negotiations, settlement authority must be obtained from Utica National and requests for authority should be made timely.

## **BILLING**

### **A. General Information**

All bills shall be submitted for review to Utica National's in house Litigation Management Unit, (LMU). Review of such bills is in no way intended to restrict, be prohibitive of or impair counsel's independent professional judgment. All questions or matters relating to submitted legal bills shall be addressed to the appropriate Utica National LMU staff attorney.

LMU shall establish the policies and procedures for submission of legal bills by counsel. For fees and expenses that under these Guidelines require advance discussion, the name of the Claim Representative with whom this was discussed, must be noted in or with your bill.

Utica National may withhold payment of bills that in whole or in part do not comply with these Guidelines. In the event that Utica National disputes any charge, the law firm has the opportunity to request a review of any amount that is disputed, provided such requests are submitted within 60 days of the date of the Bill Analysis Report.

### **B. Frequency of Billing**

Each file must be billed quarterly (measured from the date the firm received the file). No invoice may be submitted for less than \$500 (fees and expenses) except as a final invoice. In addition, all final invoices must be identified by the firm by marking the appropriate "Final" invoice field during the invoice e-submission upload.

**C. Bill Format**

Unless otherwise agreed to by Utica National Insurance Group, all invoices must be submitted electronically for payment. Details regarding registration and training for use of such system will be provided to firm upon request.

**D. Billing Entries**

Each invoice must contain a detailed description of the task performed and must be billed in a minimum increment of .1 hour. Each entry shall include the date, the activity that was performed, who performed it, their rate, the time expended, the charge and the appropriate UTBMS task codes. All entries should be listed chronologically.

Block billing, (billing more than one task in a single time entry), should be avoided. However, those tasks requiring less than .1 hour of billable time must be grouped to represent the actual time spent in performing said task.

Split time entries for tasks relating to more than one file is encouraged. In such case, invoice descriptions must adequately identify the total time expended for the task and reference the Utica file numbers for which said time is being split.

Invoices also should prominently display adjustments for fees and disbursements for discounted non-recoverable matters, capped fees or similarly negotiated reductions.

Each billing statement should be reviewed personally by the responsible firm lawyer to ensure that all time charged reasonably reflects the value of the work performed with respect to the matter, and that all recorded costs and disbursements were reasonably and necessarily incurred in connection with such matter.

**E. Charges for Services**

1. Compensation - Counsel shall consult with Utica National regarding any increase in the rate of compensation. All rate increase requests must be directed to the manager of the claim office for which the firm performs work. Firm will be notified as to whether such request has been approved.
2. In-Firm Conferences - When an attorney consults with another attorney in the firm to obtain specific advice or counsel on substantive or procedural aspects of the case that result in a more effective defense, said reasonable and necessary conference time will be reimbursed, provided that sufficient detail of the subject of the communication is set forth to demonstrate its relevance and value.



3. Multiple Attendance - Unless otherwise agreed, only one attorney should attend trial, court appearances, meetings, depositions, witness interviews, inspections and other functions.
4. Depositions - Counsel shall advise Utica National when attending depositions other than that of the plaintiff(s), the insured and other parties to the action.
5. Legal Research - Counsel should consult with Utica National before undertaking a legal research project requiring over three hours of research time. Copies of all research memoranda shall be provided to Utica National upon request.
6. Motions - Counsel should consult with Utica National before undertaking the filing of any motions.
7. Revising Standardized Forms/Pleadings - Only the actual time spent in personalizing standardized pleadings, documents, or discovery responses or requests to the case at hand should be billed, rather than the time originally spent drafting standard language.
8. Travel Time - Local travel time is not billable. Long distance travel, travel that exceeds 25 miles one way, is billable at a reduced rate only if no substantive work can be performed (e.g., driving time). Long distance travel at a full rate is billable only when substantive work is performed (e.g., legal work completed when traveling by airplane/train).

The reduced travel rate must be agreed to in advance. Absent an express agreement, travel will be paid at one-half of the firm's approved hourly rate.

9. Miscellaneous Fees - In addition to the other non-compensable activity referenced in these Guidelines, Utica National will not pay for the following:
  - a. preparing, reviewing and/or following up on firm or vendor invoices;
  - b. preparing auditor responses;
  - c. reviewing advance sheets or other publications to stay abreast of the law;
  - d. initial file review to assign the file;
  - e. individual charges for the same or similar documents sent to multiple parties (e.g., deposition notices);
  - f. editing or revision time necessitated by substandard work-product, or supervision or training of inexperienced attorneys or legal assistants;

- g. time attributable to firm personnel management, such as supervisory file review or duplication of time due to departure or unavailability of firm personnel.

Hourly rates include all overhead and internal charges such as administration, secretarial work, word processing, computer time, accounting, use of law firm facilities, overtime or weekend building utilities, file set-up, closing and storage, staff training, librarian time, and clerical time. Accordingly, Utica National will not pay for these items in addition to the professional's hourly rates.

10. Bill Submission/Payment – As previously set forth, all bills are to be submitted to Utica National for review and payment via Utica National's electronic bill program. The firm will be notified by e-mail when a bill has been approved for payment. The Bill Analysis Report setting forth the details regarding such payment and/or nonpayment can be found within the electronic billing program. Should the firm wish to dispute the nonpayment of any portion of its bill, requests shall be submitted by way of the procedure available within Utica's electronic billing program.

### **STAFFING PHILOSOPHY**

Your firm should designate one attorney to have primary responsibility for each case on which your services are requested. The case should be staffed economically and effectively. Obviously, a balance must be struck between the efficiency a more experienced lawyer at your firm brings to a given task and the advantages of having the task performed by a junior lawyer or paralegal. Duplication of effort within the firm should be avoided.

To achieve the best efficiency and value, the role and responsibilities of the staff members should be clearly defined and appropriate to each individual's qualifications, level of experience and billing rate. Defense counsel should delegate work to subordinates whenever possible to achieve efficiency and cost-effectiveness without compromising quality.

### **USE OF COMPANY RESOURCES**

Utica National Claim Representatives will conduct outside investigation necessary to the development of the case. (For example, viewing accident scenes, locating and interviewing witnesses, etc.)

### **ALTERNATIVE FEE ARRANGEMENTS**

For certain matters, fixed, capped or blended rate billing may be appropriate as an alternative to the traditional hourly-billing method. We request counsel consider, in appropriate cases, the following arrangements:

1. Fixed fees for certain matters or tasks;
2. Fixed fees plus a contingent premium;
3. Reduced hourly rates plus a contingent premium;
4. Different billing approaches for different stages;
5. Blended hourly rates;
6. Volume discounts; or
7. Percentage based fees.

An alternative fee arrangement must be the subject of a separate engagement letter by Utica National.

### **ADEQUATE DESCRIPTIONS**

Each activity for which time is billed must be described adequately so that a person unfamiliar with the code may determine what activity is being performed.

A. Adequate descriptions include, but are not limited to:

1. For office and third-party communications (e.g., telephone calls, correspondence, meetings), the identity of other participant(s) and what was discussed.

2. The purpose of the court hearing/conference and who attended.
3. The identity of each deponent/interviewee.
4. The purpose of review of deposition or trial transcripts.
5. The specific issue researched.
6. The specific non-deposition discovery worked on and the nature of the work performed.
7. The specific trial preparation performed.
8. The specific motion worked on and the nature of the work performed.
9. The identity of the material or documents reviewed.
10. For travel time, the time spent traveling, the purpose and destination.

**B. Inadequate descriptions include, but are not limited to:**

1. Attention to matter
2. Letter or telephone calls re status
3. Review of file, case or issues
4. Arrangements
5. Trial preparation
6. Research
7. Work on discovery
8. Update status or strategy
9. Work on file or case
10. Prepare for meeting
11. Prepare for deposition
12. Receive/review documents
13. Analysis

*\*See pages 14 and 15 for examples of adequate and inadequate descriptions.*

## **EXPENSES GENERALLY**

### **A. Internal Expenses**

We will pay actual out-of-pocket expenses incurred by the firm on our behalf. We will not pay any charges, which represent the internal costs or overhead of the firm. For example, we will not pay the following:

1. Staff overtime charges, overtime meals and transportation;
2. Internal messenger or courier services;
3. Photocopy charges in excess of \$.10 per page. Any unusual photocopying requirements or copying of a large volume of documents must be discussed in advance. Utica National may be able to contract for or perform the copying at a reduced cost;
4. Accounting or bookkeeping charges;
5. Fees associated with computerized research (e.g., Lexis), case management computerized support and/or document control systems;
6. Publications;
7. Continuing legal education;
8. Office supplies;
9. Administrative fees or percentages;
10. Local telephone charges (invoice must specify that charges are long distance only);
11. Postage;
12. Attempted telephone calls or voice mail messages;
13. Outside overnight/express/messenger delivery services unless required for a reason not caused by the firm (e.g., the firm's delay in preparing or filing papers is not a justification; justification must appear in the invoice);

14. Cellular phone calls (unless due to an emergency when a conventional telephone is unavailable); and
15. Travel agency booking fees.

**B. External Expenses**

Charges for services by outside vendors will be reimbursed at their actual cost. Disbursements should be itemized on the law firm's statement with the following information: (a) the name of the vendor; (b) the date incurred; and (c) a specific description of the expense. Back-up documentation shall be provided for all external expenses.

Counsel shall consult Utica National before incurring expenses greater than \$250.00 for massive document productions, creation of computerized databases, or other litigation support activities.

*Please note: This section requirements to not apply to those fees incurred under "Stenographer Fees/Medical Reports" Section C and "Professional Services" Section E of these Guidelines below.*

**C. Stenographer Fees/Medical Reports**

Stenographer fees (including deposition transcript fees) and fees associated with obtaining medical records shall be submitted for payment directly to the claim specialist assigned to the matter.

**D. Travel Expenses**

Expenses associated with local travel are not billable. Counsel should consult with Utica National prior to incurring expenses for long-distance travel.

Utica National has adopted a Corporate Travel Policy that will apply to travel expenses that the firm incurs for travel. Travel expenses must be reasonable and necessary. Airplane travel should be coach class, and, if possible, by discounted fares. Actual charges incurred for meals when you are representing Utica National on out-of-town travel will be reimbursed. Other meal expenses will not be paid.

Non-reimbursable expenses include charges for unused guaranteed hotel reservations, hotel movies, airline headsets, recreation and health club facilities, personal trip insurance, and other personal expenditures.

Reimbursable travel expenses include mileage (not exceeding the current IRS rate; mileage will be reimbursed only in connection with long distance travel), moderately priced hotel accommodations, meal charges that are reasonable and no more than \$40 per day (meals will be reimbursed only in connection with out-of-town travel), use of taxis or shuttles in lieu of rental cars wherever cost effective, and intermediate class rental cars only (insurance coverage should not be charged to Utica National and cars must be refueled before return).

When traveling on business for Utica National as well as other clients, travel expenses must be apportioned among all clients based on time billed to each client.

All travel expenses require an itemized accounting separately identifying each expense with an amount and date incurred.

#### **E. Professional Services**

Counsel shall consult with Utica National prior to incurring expenses for experts, consultants, investigators, temporary attorneys, outside paralegals, or other professional services.

Charges for these services should be forwarded separately to the Claim Representative with firm's recommendation for payment. Firm is responsible for seeing that vendors actually complete the work billed. Charges should be reasonable considering work performed.

#### **F. Secretarial and Clerical Activities**

Secretarial and clerical work is not billable to Utica National. As examples and not as a complete list, secretarial and clerical work includes receipt and distribution of mail, new file set up, maintenance of office and attorney calendars, transcribing, copying, posting, printing, faxing, e-mailing, inserting documents into and retrieving documents from the file, maintaining order in the file, stamping documents, tabbing sub-files, and assembling materials.

#### **G. Faxes**

Utica National expects to pay for telephone line charges incurred by counsel to send facsimiles. Utica National will not pay charges for receipt by counsel of facsimiles, or for other overhead expenses of the firm, such as machine maintenance, paper or operator costs. These costs are considered to be normal overhead.

#### **H. Billing Format / Documentation for Expenses**

Each invoice must include:

1. The expense detail and documentation required under these Guidelines;
2. For travel expenses, sufficient detail to determine whether the firm has complied with the applicable provisions of these Guidelines.

The law firm should be prepared to support the actual cost of any disbursement billed to Utica National.

Itemized receipts must be supplied for all travel expenses, and any other expense greater than \$150. Vendor receipts (including hotel bills and tickets) must be supplied. Credit card receipts are unacceptable. Travel, deposition, expert and consultant expenses, and individual expenses exceeding \$250 must be discussed in advance with the Claim Representative.

Do not include mark-ups on internal or outside expenses. We pay only the actual cost of expenses that are reimbursable under these Guidelines.

### **AUDITING**

Utica National reserves the right to review all charges for services and disbursements pertaining to litigation, including without limitation all charges paid by the insured with respect to such litigation, whether pursuant to self-insured retentions or deductibles under Utica National's insurance policies or otherwise. Utica National reserves the right to conduct on site audits and to review the defense file and/or defense bills, consistent with the defense attorney's ethical obligations, and in a manner that will not compromise the attorney-client or work product protection accorded material in the file or communications by and between counsel, the client and Utica National. Counsel agrees to comply with all reasonable requests for information and documents, provided that such documents or information are not privileged or intended by the insured to be confidential. In such instance, Utica National must obtain the consent of the insured. Utica National fully reserves all rights to decline to pay or to seek reductions and/or refunds with respect to charges that fail to comply with the requirements set forth herein, and which are not fully explained or documented by the firm after reasonable inquiry. Utica National shall allow the law firm to appeal any declination of payment. Counsel will make a reasonable effort to submit appeals within 60 days of receipt of the Bill Analysis Report. Utica National agrees to pay undisputed portions of bills received from counsel within 30 days.



**ADEQUATE DESCRIPTIONS**  
**EXAMPLES**

**1. Telephone Conferences**

*Acceptable*

"Conference with plaintiff's counsel concerning settlement."

*Unacceptable*

"Conference"

"Telephone calls to counsel."

**2. Correspondence**

*Acceptable*

"Letter to plaintiff's counsel regarding outstanding discovery."

"Review correspondence from claims representative providing defendant's statement."

*Unacceptable*

"Draft letter to defendant."

"Review correspondence."

**3. Preparation of Pleadings**

*Acceptable*

"Prepare memorandum of law in support of motion for summary judgment on statute of limitations."

*Unacceptable*

"File motion."

**4. Legal Research**

*Acceptable*

*"Research regarding key liability and evidentiary issues as discussed with Claims Representative Andrew Jones."*

*Unacceptable*

*"legal research."*

**5. Discovery**

*Acceptable*

*"Receipt and review discovery requests from plaintiff's counsel."*

*"Review plaintiff's medical records in preparation of deposition."*

*Unacceptable*

*"Reviewing discovery."*

*"Review medical records."*

*"Attend depositions."*

**6. Court Appearances**

*Acceptable*

*"Conference with court regarding scheduling order."*

*"Attend summary judgement hearing."*

*Unacceptable*

*"Conference with court."*

**CONFIDENTIAL SETTLEMENT COMMUNICATION -- WITHOUT PREJUDICE**

**EXHIBIT D:**

***CROSS-ACKNOWLEDGEMENTS AND CONSENTS WITH RESPECT TO  
DEFENSE AND INDEMNITY AGREEMENTS WITH RESPECT TO  
ASBESTOS-RELATED BODILY INJURY CLAIMS***

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SCRIPPS

**CROSS-ACKNOWLEDGEMENTS AND CONSENTS WITH RESPECT TO  
DEFENSE AND INDEMNITY AGREEMENTS WITH RESPECT TO  
ASBESTOS-RELATED BODILY INJURY CLAIMS**

This agreement is entered among HOWDEN BUFFALO INC., formerly known as BUFFALO FORGE COMPANY (a Delaware corporation); AMPCO-PITTSBURGH CORPORATION; BUFFALO PUMPS, INC.; AEROFIN CORPORATION, formerly known as BUFFALO FORGE COMPANY (a New York corporation); BUFFALO AIR HANDLING COMPANY; UTICA MUTUAL INSURANCE COMPANY; XL INSURANCE COMPANY, LTD., formerly known as Winterthur International Insurance Co. Ltd. or XL Winterthur International Insurance Co. Ltd.; ARGONAUT INSURANCE COMPANY; ARGONAUT MIDWEST INSURANCE COMPANY; ARGONAUT SOUTHWEST INSURANCE COMPANY; HARTFORD ACCIDENT AND INDEMNITY COMPANY; LIBERTY MUTUAL INSURANCE COMPANY; and PACIFIC EMPLOYERS INSURANCE COMPANY.

**I. DEFINITIONS**

For the purpose of this agreement only, the following terms shall have the meanings set forth in this Section I. Each defined term stated in a singular form shall include the plural form, each defined term stated in plural form shall include the singular form, and each reference to the masculine or the feminine gender shall include the other.

A. "Aerofin Asbestos-Containing Product" shall mean a product that was allegedly manufactured, distributed, handled, installed, repaired, maintained or sold by Aerofin Corporation, on or after July 21, 1982, or, prior to that date, by its predecessor, Aerofin Corporation, a New Jersey Corporation, and that allegedly contained asbestos or included features allegedly designed to permit the incorporation of asbestos-containing materials. "Aerofin Asbestos-Containing Product" shall not include any product allegedly manufactured, distributed, handled, installed, repaired, maintained or sold solely by an entity other than Aerofin Corporation or its predecessor, Aerofin Corporation, a New Jersey Corporation.

B. "Aggregate Limits" shall mean the aggregate limits of liability for bodily injury coverage applicable to products/completed operations claims, if any, under the terms and conditions of any of the Policies.

C. "Ampco Agreements" shall mean the Ampco-Utica Agreement, the Ampco-Hartford Agreement, the Ampco-Argonaut Agreement and the Ampco-Liberty Agreement.

D. "Ampco-Argonaut Agreement" shall mean the Defense and Indemnity Agreement between the Ampco-Pittsburgh Companies and Argonaut, dated August 1, 2005, attached as Exhibit F.

Richard P. Creedon  
Executive Vice President,  
General Counsel &  
Senior Claims Officer

September 28, 2012

Mr. Richard T. O'Connell  
Charterbrook Associates, LLC  
10 Dogwood Lane  
Ellington, CT 06029

Re: Administrative Services Agreement between Utica Mutual Insurance Company and National Indemnity Company

Dear Mr. O'Connell:

I write to inform you that Utica Mutual Insurance Company, on behalf of itself and its member companies (Graphic Arts Mutual Insurance Company, Republic Franklin Insurance Company, Utica National Assurance Company, Utica National Insurance Company of Texas, Utica Lloyds of Texas, and Utica Specialty Risk Insurance Company) (collectively "Utica"), has entered into an agreement with National Indemnity Company ("National Indemnity") to provide for the handling and administration of asbestos claims against Utica's policyholders.

On and after October 1, 2012, these asbestos claims will be handled and administered by the New England Division of Resolute Management, Inc. ("Resolute"), an affiliate of National Indemnity. I want to explain the relationship among Utica, National Indemnity and Resolute, and how asbestos related claims against your company will be handled by Resolute on a "go-forward" basis.

Effective September 28, 2012, Utica and National Indemnity entered into an Administrative Services Agreement under which National Indemnity's affiliate, Resolute, on Utica's behalf, will administer and handle certain asbestos claims. Accordingly, claims professionals who are employed by Resolute will be responsible for the day-to-day handling and disposition of any claims against you and your company, as a policyholder of Utica, arising out of exposure to asbestos or asbestos containing materials.

Utica will, of course, continue to stand behind and honor their contractual obligations under policies of insurance and established claims-handling agreements. While the identity of the person handling your asbestos related claim, and the physical location of that claim handling will change, Utica's policyholders will continue to receive the same quality service that you and your company have received from Utica and its staff of claims professionals in the past.

Resolute has begun the handling of asbestos related claims against Utica policyholders. A Resolute claims professional may contact you with any questions that he or she may have with

respect to an asbestos related claim. In the interim, please direct any further communications regarding your or your company's asbestos related claim to one of the principal contact persons at Resolute, who are Brooke Green ([bgreen@resolute-ne.com](mailto:bgreen@resolute-ne.com); (617) 234-3836, or Joke Balogun ([jbalogun@resolute-ne.com](mailto:jbalogun@resolute-ne.com); (617) 234-3820).

Utica, together with Resolute's staff of claims professionals, is committed to continue to provide Utica's policyholders with quality and efficient claims handling. Utica appreciates your cooperation with Resolute in its efforts to achieve the prompt and beneficial disposition of asbestos related claims against you or your company.

Sincerely,



Richard P. Creedon

RPC:cs

SCRIPPS

From: [Adam.Kelly@uticanational.com](mailto:Adam.Kelly@uticanational.com) [<mailto:Adam.Kelly@uticanational.com>]

Sent: Friday, September 28, 2012 2:38 PM

To: [dniemann@gnmlawyer.com](mailto:dniemann@gnmlawyer.com)

Subject: Re: Administrative Services Agreement between Utica Mutual Insurance Company and National Indemnity Company

I write to inform you that Utica Mutual Insurance Company, on behalf of itself and its member companies (Graphic Arts Mutual Insurance Company, Republic Franklin Insurance Company, Utica National Assurance Company, Utica National Insurance Company of Texas, Utica Lloyds of Texas, and Utica Specialty Risk Insurance Company) (collectively "Utica"), has entered into an agreement with National Indemnity Company ("National Indemnity") that allows for National Indemnity to take over the handling and administration of asbestos claims against Utica's policyholders.

Beginning October 1, 2012, these asbestos claims will be handled and administered by the New England Division of Resolute Management, Inc. ("Resolute"), an affiliate of National Indemnity. Claims professionals who are employed by Resolute will be responsible for the day-to-day handling and disposition of any claims you are defending on behalf the following insureds:

Howden Buffalo

As of October 1, 2012, please direct any further communications regarding the defense of the above referenced accounts to Leslie A. Kilnapp ([lkilnapp@resolute-ne.com](mailto:lkilnapp@resolute-ne.com); (617) 499-3986) or Joke Balogun ([jbalogun@resolute-ne.com](mailto:jbalogun@resolute-ne.com); (617) 234-3820). Communications can also be mailed to the following address:

**Resolute Management Inc.** – New England Division  
1000 Washington St.  
Boston, MA 02118

Furthermore, all future legal invoices should be submitted to the following:

[billing@resolute-ne.com](mailto:billing@resolute-ne.com)

Invoices that are currently with Utica will be forwarded to Resolute for processing.

Thank you.

Adam M. Kelly  
Managing Attorney | Home Office Claims Legal  
Utica National Insurance Group  
P.O. Box 530  
Utica, New York 13503

Phone: 315.734.2916 or 800.274.1914 ext 2916  
Fax: 315.734.2976

[www.uticanational.com](http://www.uticanational.com)

**Barbour, Danielle**

---

**From:** Richard O'Connell <rtoc@sbcglobal.net>  
**Sent:** Tuesday, October 02, 2012 9:41 AM  
**To:** mpietrykowski@gordonrees.com; Fpond@PondNorth.com; Sgryder@PondNorth.com; RSG@pgslaw.com; Nglenn@kjmsh.com; rspinelli@kjmsh.com; mrust@grsmb.com; Rfournie@armstrongteasdale.com; akidd@armstrongteasdale.com; cliljestrand@hinshawlaw.com; dcantrell@binghammchale.com; awhite@binghammchale.com; jalexovich@binghammchale.com; jphub1@wellsmoore.com; ndonzella@bbsclaw.com; BGuekguezian@adlercohen.com; dniemann@gnmlawyer.com; tmauti@gnmlawyer.com; cgallagher@gnmlawyer.com; jfanning@cullenanddykman.com; svangelder@goldbergsegalla.com; mfloyd@rhwrlaw.com; aromano@rhwrlaw.com; Drew.Rhodes@ogletreedeakins.com; fuller@namanhowell.com; gmccall@kern-wooley.com; ahollingsworth@mga-law.com; dinsdale@sohalang.com; wjwitte@rhwrlaw.com; Joey Lee Miranda  
**Cc:** michael.johnston@xlgroup.com; rlucchesi@argogroupus.com; Cuneyt.Hakanoglu@thehartford.com; Pam.Edwards@LibertyMutual.com; barbara.hahn@ffic.com; maria.thompson@resolute-midatlantic.com; christopher.milliman@uticanational.com; Greaney, William; Greszler, Timothy; Levitt, Scott; Lynne Puckett; Traci Benish; Frances Griggs  
**Subject:** Howden asbestos claims  
**Attachments:** Letter to R. Creedon.pdf

Dear Counsel:

I am writing to you on behalf of Howden North America, Inc., and in response to an email you received on September 28 from Adam Kelly of Utica National Insurance Company. In that email, Mr. Kelly purported to advise you that Resolute Management, Inc. -- New England Division ("Resolute") has assumed responsibility for the handling and administration of asbestos claims against HNA and other Utica policyholders.

Please be advised that Mr. Kelly's email was sent to you without HNA's knowledge or authorization. HNA's position is that Utica's attempt to transfer its asbestos claims management obligations owed to HNA -- which Utica assumed in a written settlement agreement dated September 2005 -- to an unrelated third party has no legal or contractual basis, and is in violation of Utica's responsibilities under the 2005 settlement agreement. I am attaching a letter sent last night to Utica detailing HNA's position. Accordingly, unless and until this matter is resolved, HNA categorically does not consent to the purported substitution of Resolute for Utica as Lead Carrier under the 2005 settlement agreement. We also expressly advise you not to communicate about pending asbestos cases assigned to you with Ms. Kilnapp or any other representative of Resolute. Instead, please continue to copy Chris Milliman and Dan Hammond of Utica on all correspondence related to HNA asbestos claims. Any information conveyed by you to Resolute will, in the absence of HNA's consent, risk waiver of the attorney-client and joint defense privilege.

If you have any questions regarding this matter, please contact me.

Rick O'Connell



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIR & LIQUID SYSTEMS	)	Civil Action No. 11-00247
CORPORATION; AMPCO-PITTSBURGH	)	
CORPORATION,	)	JUDGE JOY FLOWERS CONTI
	)	
Plaintiffs,	)	
v.	)	
	)	
ALLIANZ UNDERWRITERS	)	
INSURANCE COMPANY, et. al.	)	
	)	
Defendants.	)	

**DEFENDANT INSURERS'**  
**NOTICE OF ATTENDANCE**

The following persons will be attending the September 13-14, 2012  
settlement conference on behalf of the defendant insurers named below:

**ALLIANZ UNDERWRITERS INSURANCE COMPANY**

Greg Worthington  
Senior Claims Specialist  
Allianz Global Corporate and Specialty  
2350 Empire Avenue  
Burbank, CA 91504-3350

-and-

Michael Buckley  
Rivkin Radler  
926 RXR Plaza  
Uniondale, NY 11556-0926

**ALLSTATE INSURANCE COMPANY (AS SUCCESSOR-IN-INTEREST TO  
NORTHBROOK EXCESS AND SURPLUS INSURANCE COMPANY)**

Kurt Schaden  
Direct Claim Analyst  
Allstate Insurance Company  
Specialty Operations Division  
3075 Sanders Road, Suite H1W  
Northbrook, IL 60062

-and-

Steve Calogero  
Windels Marx Lane & Mittendorf, LLP  
One Giralda Farms, Suite 380  
Madison, NJ 07940

AMERICAN INSURANCE COMPANY

Barbara Hahn  
Claims Specialist  
AZOA Resolution Services  
Fireman's Fund Insurance Company  
777 San Marin Drive  
Novato, CA 94998-3000

-and-

Michael Buckley  
Rivkin Radler  
926 RXR Plaza  
Uniondale, NY 11556-0926

ASSOCIATED INTERNATIONAL INSURANCE COMPANY

Robert E. Krouse, Jr.  
Executive Claims Examiner  
Markel-Claims  
4600 Cox Road  
Glen Allen, VA 23060

-and-

Robert P. Siegel  
Traub Lieberman Straus & Shrewsberry, LLP  
Mid-Westchester Executive Park  
Seven Skyline Drive  
Hawthorne, NY 10532

CERTAIN LONDON MARKET COMPANIES

Assicurazioni Generali S.P.A., Stronghold Insurance Company, and Dominion  
Insurance Company:  
John F. Curley  
Vice President – Claims

Generali US Branch  
7 World Trade Center  
250 Greenwich Street, 33<sup>rd</sup> Floor  
New York, NY 10007

-and-

Harper Versicherungs AG (also known as Harper Insurance Limited and former known as Turegum Insurance Company)

Daniel McCarthy  
Vice President Claims  
Enstar Group Limited  
475 Kilvert St. Ste 330  
Warwick, RI 02886

-and-

John McAndrews  
Carolina Salazar  
Mendes & Mount, LLP  
750 Seventh Avenue  
New York, NY 10019

COLUMBIA CASUALTY COMPANY

Mark Muth  
Vice President and Special Counsel  
Resolute Management, Inc. - New England Division  
1000 Washington Street, 4<sup>th</sup> Floor  
Boston, MA 02118

-and-

Patrick Hofer  
Troutman Sanders LLP  
401 9<sup>th</sup> Street NW, Suite 1000  
Washington, D.C. 20004

EXECUTIVE RISK INDEMNITY INC (f/k/a ERIC REINSURANCE COMPANY, f/k/a AMERICAN EXCESS INSURANCE COMPANY)

Thomas V. O'Kane  
MRAm

-and-

William P. Shelley  
Joseph A. Arnold  
Cozen & O'Connor  
1900 Market Street  
Philadelphia, PA 19103

FARADAY REINSURANCE CO. LIMITED AND GENERAL STAR  
INTERNATIONAL INDEMNITY LTD.

Peter John Gilbert  
Claims Executive  
Faraday Reinsurance Co. Limited

-and-

Teresa Snider  
Butler Rubin Saltarelli & Boyd LLP  
70 West Madison St., Suite 1800  
Chicago, IL 60602

FEDERAL INSURANCE COMPANY

Brendan R. Kelly  
Federal Insurance Company

-and-

William P. Shelley  
Joseph A. Arnold  
Cozen & O'Connor  
1900 Market Street  
Philadelphia, PA 19103

FIRST STATE INSURANCE COMPANY AND TWIN CITY INSURANCE  
COMPANY

Cuneyt Hakanoglu  
Consultant, Complex Claims Group  
The Hartford

-and-

M. Brian Thompson  
Counsel, Complex Claims Group  
The Hartford

-and-

James P. Ruggeri  
Shipman & Goodwin  
1133 Connecticut Avenue, N.W.  
Washington, D.C. 20036-4305

MT. MCKINLEY INSURANCE COMPANY (f/k/a GIBRALTAR CASUALTY COMPANY)

Jim Wendover, Mt. McKinley Insurance Company

-and-

Daniel F. Gourash  
Seeley, Savidge, Ebert & Gourash Co., LPA  
26600 Detroit Road  
Cleveland, OH 44145-2397

OLD REPUBLIC INSURANCE COMPANY

Michael Arrighi  
Horizon Management

-and-

Amy R. Paulus  
Clausen Miller P.C.  
10 South LaSalle Street  
Chicago, IL 60603

TIG INSURANCE COMPANY, AS SUCCESSOR TO INTERNATIONAL INSURANCE COMPANY, AND UNITED STATES FIRE INSURANCE COMPANY

Ms. Maria Matteo Thompson  
Assistant Vice President  
Resolute Management Inc. – Mid-Atlantic Division  
United Plaza  
30 S. 17<sup>th</sup> Street, Suite 700  
Philadelphia, PA 19103

-and-

Lawrence A. Nathanson  
Siegal & Park  
533 Fellowship Road, Suite 120

Mt. Laurel, NJ 08054

UNDERWRITERS AT LLOYD'S LONDON, TENECOM LIMITED, AS SUCCESSOR  
TO YASUDA FIRE AND MARINE, EQUITAS INSURANCE LIMITED,  
LEXINGTON INSURANCE COMPANY AND NEW HAMPSHIRE INSURANCE  
COMPANY

Leslie Kilnapp  
Account Manager  
Resolute Management, Inc. – New England Division  
1000 Washington Street, 4<sup>th</sup> Floor  
Boston, MA 02118

-and-

Mark Muth  
Vice President and Special Counsel  
Resolute Management, Inc. – New England Division  
1000 Washington Street, 4<sup>th</sup> Floor  
Boston, MA 02118

-and-

John McAndrews  
Carolina Salazar  
Mendes & Mount, LLP  
750 Seventh Avenue  
New York, NY 10019

Respectfully Submitted

/s/ Lawrence A. Nathanson

Lawrence A. Nathanson (Pa. ID  
48488)

Siegal & Park

533 Fellowship Road, Suite 120

Mt. Laurel, NJ 08065

Telephone: (856) 380-8910

Facsimile: (856) 380-8911

Counsel for TIG Insurance

Company (as successor by merger

to International Insurance Company)

and United States Fire Insurance

Company

Dated: August 30, 2012

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Bill Kenealy

## Utica Mutual cedes asbestos liabilities to Berkshire Hathaway unit

September 28, 2012 - 3:36pm

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Utica Mutual Insurance Co. has entered into a reinsurance agreement to cede most of its asbestos liabilities to National Indemnity Co., Utica said Friday.



Under the deal, Utica Mutual, a unit of New Hartford, N.Y.-based Utica National Insurance Group, will cede a preponderance of its asbestos exposures, from both current and future claims, to National Indemnity, an Omaha, Neb.-based subsidiary of the Berkshire Hathaway Inc.

Read more in the  
Brokers & Insurers Channel

[What's This?](#)

Utica declined to disclose the amount of liabilities being ceded.

J. Douglas Robinson, Utica National chairman and CEO, said claims related to asbestos had hampered the company's financial performance in recent years.

"Over the five-year period from 2006 to 2010, Utica National has carried the third-largest drag on earnings, due to asbestos and environmental losses, in the property/casualty insurance market, as measured by the impact on our combined ratio," Mr. Robinson said in a statement. "Ceding these legacy asbestos exposures gives us more control over our own destiny, restores a large measure of predictability to our results, and greatly mitigates the uncertainty that these claims and their development present to our company."

The reinsurance agreement began Friday.

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SAN FRANCISCO  
SILICON VALLEY  
WASHINGTON

**WILLIAM F. GREANEY**  
TEL 202.662.5486  
FAX 202.778.5486  
WGREANEY@COV.COM

October 1, 2012

VIA ELECTRONIC MAIL

Richard P. Creedon, Esq.  
Executive Vice President, General Counsel  
& Senior Claims Officer  
Utica National Insurance Group  
P.O. Box 530  
Utica, NY 13503-0530

**Re: Howden North America Inc. Asbestos Claims**

Dear Mr. Creedon:

This firm represents Howden North America, Inc. ("HNA"). At HNA's request, I am writing in response to your letter of September 28, 2012 to Richard T. O'Connell of Charterbrook Associates LLC. In that letter, you state that Utica Mutual Insurance Company and its affiliates ("Utica") have entered into an "Administrative Services Agreement" with National Indemnity Company ("NICO"), under which Utica has purported to assign its ongoing asbestos claims management obligations owed to HNA -- which Utica assumed in a 2005 settlement agreement with HNA -- to Resolute Management, Inc. - New England Division ("Resolute"), a subsidiary of NICO that is (a) actively adverse to HNA in pending asbestos coverage litigation and (b) managing the defense of multiple excess insurers in the same litigation as they seek to evade coverage for the same underlying asbestos claims that Utica is contractually responsible for defending on HNA's behalf.

Please be advised that HNA objects to the purported assignment, which has been made in direct violation of Utica's contractual obligations under the Defense and Indemnity Agreement With Respect to Asbestos-Related Bodily Injury Claims executed by HNA, Utica and other insurers in September 2005 ("Agreement"). That Agreement -- which resolved active coverage litigation between HNA and its primary and umbrella insurers -- established a detailed framework under which Utica and HNA's other insurers assumed responsibility for administering, managing, defending and settling "Asbestos-Related Bodily Injury Claims" against HNA. Utica assumed the role of "Lead Carrier" under that Agreement, and is responsible in that role for coordinating HNA's defense against, and allocating payment responsibility for, Asbestos-Related Bodily Injury Claims pursuant to detailed allocation methodologies set forth in sections II and III of the Agreement. Section IV of the Agreement



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Richard P. Creedon, Esq.

October 1, 2012

Page 2

vests the Lead Carrier with control of HNA's defense strategy, including the selection of trial counsel and decisions whether to settle or try individual cases, after consultation with HNA and the other participating insurers. Finally, section IV-F states that communications between HNA and its insurers (including Utica) relating to the defense of Asbestos-Related Bodily Injury Claims are subject to the common interest and joint defense privileges. It would hardly be conducive to the maintenance of these privileges to permit Utica to assign carte blanche all of its claims management responsibilities under the Agreement to an entity (Resolute) that is controlling the defense of excess carriers in pending coverage litigation with HNA, and which has, in that capacity, asserted numerous affirmative defenses to coverage attacking the methodology and legal effect of the Agreement.

Moreover, the Agreement itself simply does not permit Utica to unilaterally transfer its critically important claims management and joint defense responsibilities as Lead Carrier over to a third-party stranger to the Agreement, let alone an antagonistic stranger like Resolute, whose interests (like those of its putative reinsurer parent, NICO) are adverse to HNA. Section XVI of the Agreement, which is entitled "No Assignment", prohibits Utica from assigning its responsibilities as Lead Carrier to a third-party without the consent of HNA and any other parties that are "affected by the assignment". Utica did not even attempt to comply with this contractual provision. Instead, it notified HNA's representative of the purported assignment late Friday afternoon, provided virtually no information about the transaction with NICO, and presented the purported transfer as a *fait accompli*. HNA considers this conduct to be frontally inconsistent with Utica's obligations under the 2005 Agreement. HNA does not consent to the purported assignment of Utica's claims management responsibilities to Resolute, and does not consent to (and strongly objects to) the dissemination of any confidential underlying joint defense communications or information to Resolute.

HNA also requests that Utica promptly provide HNA with the following information about the putative reinsurance and claims management transaction that was disclosed to it for the first time last Friday.

1. What information, if any, concerning the defense of active Asbestos-Related Bodily Injury Claims has Utica transferred to Resolute without the knowledge or consent of HNA and the other parties to the 2005 Agreement?
2. If confidential defense information has been transferred to Resolute, please describe the steps that Utica will take to promptly retrieve any such information from Resolute and avoid a potential waiver of privilege.
3. Please provide copies of any and all documents describing or summarizing how Utica's claims management responsibilities as Lead Carrier would be handled under the proposed transactions with NICO and Resolute, including copies of the Administrative Services Agreement referenced in your September 28 letter, any reinsurance agreement between Utica and NICO, and any other agreements or understandings between Utica, NICO and/or Resolute

COVINGTON & BURLING LLP

Richard P. Creedon, Esq.  
October 1, 2012  
Page 3

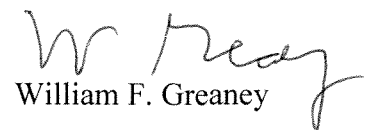
bearing upon Utica's obligations for managing and defending Asbestos-Related Bodily Injury Claims against HNA.

4. What steps has Utica taken to address the obvious conflict-of-interest that would exist in the event Resolute assumed Utica's responsibilities for administering an Agreement whose allocation methodologies, provisions for establishing policy exhaustion, and legal effect have been repeatedly challenged by Resolute, acting on behalf of other recalcitrant insurers, in coverage litigation pending between HNA, Ampco-Pittsburgh and Resolute-controlled insurers in the U.S. District Court for the Western District of Pennsylvania?

Unless and until Utica provides satisfactory answers to these questions, and provides HNA with sufficient information to enable it to evaluate the purported transaction and its impact on HNA's rights under the 2005 Agreement, HNA will have no alternative but to consider the belated notice it received last Friday, September 28, as a notice of withdrawal by Utica as Lead Carrier under Section IV-C of the Agreement. Accordingly, HNA will begin working with the other participating insurers to select a replacement Lead Carrier or to assume that role itself, as contemplated by Section IV-C. Utica, of course, will remain bound by all of the other obligations it has assumed under the Agreement, whether or not it remains as Lead Carrier.

HNA looks forward to receiving Utica's prompt response to the points raised in this letter.

Sincerely yours,

  
William F. Greaney

cc: Richard T. O'Connell  
Lynn A. Puckett, Esq.  
Daniel J. Hammond, Esq.  
Adam M. Kelly, Esq.

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Howden North America Inc.

(b) County of Residence of First Listed Plaintiff Richland County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

William D. Geiger, Davies, McFarland & Carroll, P.C.  
One Gateway Center, 10th Floor, Pittsburgh, PA 15222  
412-281-0737

**DEFENDANTS**

Utica Mutual Insurance Company; National Indemnity Company

County of Residence of First Listed Defendant Oneida County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

Hunton & Williams LLP for Utica Mutual Insurance Company  
Simpson Thacher for National Indemnity Company

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability  <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332

Brief description of cause:

Declaratory Judgment, Breach of Contract, Tortious Interference with Contract, Bad Faith**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

Joy Flowers Conti

DOCKET NUMBER

03-1809; 09-1014; 11-247;

DATE

10/04/2012

SIGNATURE OF ATTORNEY OF RECORD

William D. Geiger / TDG

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS 44AREVISED June, 2009  
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

**PART A**

This case belongs on the ( ☐ Erie ☐ Johnstown ☒ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in \_\_\_\_\_ County and that the \_\_\_\_\_ resides in \_\_\_\_\_ County.

**PART B** (You are to check ONE of the following)

1. ☒ This case is related to Number 03-1808; 09-1014; 11-247; 12-1427. Short Caption \_\_\_\_\_
2. ☐ This case is not related to a pending or terminated case.

**DEFINITIONS OF RELATED CASES:**

**CIVIL:** Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit  
**EMINENT DOMAIN:** Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

**HABEAS CORPUS & CIVIL RIGHTS:** All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

**PART C**

**I. CIVIL CATEGORY** (Place x in only applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas corpus
4. ☐ Civil Rights
5. ☐ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☐ All other federal question cases
8. ☐ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☒ Insurance indemnity, contract and other diversity cases.
10. ☐ Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: October 4, 2012

William D. Seizer / TDC

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

\_\_\_\_ District of \_\_\_\_\_

Defendant(s)

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

for the

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)
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V.

Defendant(s)

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 was received by me on *(date)* \_\_\_\_\_.

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 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: